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REPRESENTATIVE GOVERNMENT IN EVOLUTION

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Representative government on a national scale did not originate in the psychology of primitive Teutons, as English historians long contended;[1] nor is it a mere bourgeois institution of passing significance, designed to delude the masses, as Fascists and Bolsheviks have alleged. Its vast historical complications conform to no such simple thesis. On the contrary, representative government began its career as an instrument of political power, in a given complex of social and economic circumstances, to serve the purposes of ruling monarchs; and it has played a bewildering rôle, in form, spirit, and authority, for more than five hundred years. Flexibility has been its prime characteristic. As a means, not an end in itself, it has served an infinite variety of causes, and has displayed both adaptability and survival power. In form, it has not been a political stereotype. Rather, it has been amazingly variable. In spirit, in the ideas associated with its evolution, and in the uses to which it may be put, representative government is subtle and adaptable, offering to statesmen who have imagination and manipulative capacity a tool of inexhaustible utility. Hence a wide historical view of representative government in evolution is indispensable to any understanding of its nature or its possible place in the future government of mankind.

It is fitting to inquire at the outset rather narrowly into the

[1] Cf. Charles A. Beard, "The Teutonic Origins of Representative Government," in this REVIEW, Feb., 1932.

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concept, or idea, of representation—a term that is used freely in political literature as if the thing for which it stands were an objective reality, the same always and everywhere. Unfortunately, this is a difficult task. The writer in the field of politics labors under difficulties which do not vex his colleagues in natural science. The latter are concerned primarily with objective phenomena that do not change rapidly with the seasons and are not associated with fuzzy ideas, at least not immediately; hydrogen was hydrogen to Lord Kelvin and is still hydrogen to Madam Curie. The student of politics, on the other hand, must deal with phenomena which are both ideas and realities. He has before him, let us say, a parliament of 450 members, all of whom may be described fairly well in anthropometric terms and speak for given numbers of persons statistically measurable in the election returns. But such facts are relatively unimportant. The action of this parliament springs from ideas, wills, sentiments, and ambitions within individual members, acting in response to complex stimuli from without. Description and measurement, at all events in the present state of our discernment, do not give us an understanding of representation.

If the idea of representation could be caught on the wing, transfixed, and dissected at a given moment, the troubles of the searcher would not be at an end. Every political idea is in process of continuous evolution. It changes from time to time as its possessors give new content to it out of inquiry and experience. And at a particular moment it may mean one thing to the logically competent and something else to the more or less obfuscated generality. To this rule, the conception of representation offers no exception. It evolves in structure and spirit, precisely as the institution itself is confronted by new tasks thrown up by the social and economic development of the society in which it functions.

For these reasons, and many others, it is appropriate to ask first of all: What realities are covered by the word "representation"? The term has come into the English language through French derivatives from the Latin *repraesentare,* meaning, quite literally, "to bring before one, to bring back, to exhibit, to show, to manifest, to display." In classical Latin, it was not a political term, but was applied primarily to concrete objects, in a very realistic fashion. When it appeared in England, after a sojourn

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in France, transformed through *répresentation,* its original meaning still clung to it. In fourteenth-century English, it meant "to symbolise, to serve as a visible and concrete embodiment of;" as, for example, in Wycliffe: "Ymages that representen pompe and glorie of the worlde."

No illustrations of its use in a political sense appear before the sixteenth century, at least in the record of the Oxford Dictionary. By that time, it had come to mean to take or fill the place of another in some capacity or for some purpose; to be a substitute in some capacity for another person or body; to act for another by deputed right. "Our Generall," runs a quotation from about 1595, "sent Cap. Jobson, repraesenting his person with his authority, as his Leiftenante Generall." Speaking strictly, of course, this is not a political usage, but it implies agency, deputation, and authorization, and hence marks an easy transition to the purely political terminology employed by such writers as Coke, Hobbes, and Locke. Doubtless the English transformation was facilitated by the fact that during the early Middle Ages *repraesentare* had acquired, in the hands of Latin writers, a political meaning akin to its present sense. However this may be, representation had come into general use in England by the opening of the seventeenth century to describe the system of deputation that had grown up with the development of Parliament.

But in time the term took on more mystic implications. Near the close of the sixteenth century, Sir Thomas Smith could write that the Parliament of England "representeth and hath the power of the whole realme both the head and the bodie. For everie Englishman is entended to be there present, either by person or by procuration and attornies, of whatever preheminence, state, dignitie, or qualities soever he be, from the Prince (be he King or Queen) to the lowest person of England, and the consent of Parliament is taken to be everie man's consent."[2] This concept Burke carried another step: "The value, spirit, and essence of the House of Commons consists in its being the express image of the feelings of the nation." In other words, the idea of representation has in it the concept of bare agency, the substitution of one for many, but it is more: the supreme representative body is supposed to mirror the whole movement of social and economic forces within the na-

[2] *De Republica Anglorum,* 1583 (Ed. Alston, 1906, Cambridge Press), p. 49.

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tion, to express the nation's will and its sentiments. Correctly conceived, it involves a philosophy of history.

Although representative government now carries with it such democratic implications, it has not always been democratic in conception. Some of the mediæval writers looked upon the absolute monarch as *representing* the community. According to John of Salisbury, "the prince is first of all to make a thorough survey of himself, and diligently study the condition of the whole body of the commonwealth of which he is the representative, and in whose place he stands. . . ."[3] Again: "Wherefore in the ordinances of princes or the promulgations of magistrates the plural number is used by prolemsis to the end that every ordinance and other kind of promulgation may be seen to be the act not so much of the officer personally as of the corporate community. . . ."[4] In John's political theory, the prince is the representative of the community—in other words, stands in the place of the community. Owing to his representative character, the acts of the prince are to be deemed acts of the community. Yet while he acts for the generality, he is not responsible to the commonwealth for what he does. As Dickinson puts it, "the prince is responsible *for* the commonwealth, but not *to* it."[5] Since he holds his office from God rather than the people, he is responsible only to God or to God's representatives.[6] Later mediæval writers make use of a similar concept of representation; and the controversies over conflicting authority are often expressed in terms of rival representative capacities.[7]

[3] *Policraticus*, 1159 (tr. Dickinson, N.Y., 1927, v. 2, p. 64).

[4] *Ibid.*, v. 4, p. 74.

[5] *Ibid.*, p. XLIV.

[6] However chosen, the prince derives his authority from God. "He is placed by the divine governance at the apex of the commonwealth, and preferred above all others, sometimes through the secret ministry of God's providence, sometimes by the decision of his priests, and again it is the vote of the whole people which concur to place the ruler in authority" (*ibid.*, v. 6, p. 83). "The place of the head in the body of the commonwealth is filled by the prince, who is subject only to God and to those who exercise his office and represent him on earth" (*ibid.*, v. 2, p. 65).

[7] As in John's writings, the prince is considered as representing the whole community of his subjects. Cf. especially the following passages: *Princeps repraesentat illum populum et ille populus imperium etiam mortuo principe . . .*, Baldus, 1391, Gierke, *Political Theories of the Middle Ages*, tr. Maitland, 1900, note 216. The emperor "*in loco ipsorum populorum*" represents the whole Christian people,

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If we leave speculative writers for concrete realities, we also find representation often disassociated from democratic notions. A representative body may speak for a narrow class, as did the English parliament for about six hundred years. Neither does it carry with it republican implications; England has retained her

"*cum in eum translata sit iurisdictio et potestas universi orbis,*" Zarbarella, c. 1406, Gierke, note 192; *Ordinare autem aliquid in bonum commune est vel totius multitudinis vel alicuis gerentis vicem totius multitudinis; et ideo condere legem vel pertinet ad personam publicam quae totius multitudinis curam habet,* Thos. Aquinas (Gierke, note 217). In like manner, the pope is considered the representative of the universal Church and the lesser prelates the representatives of local church units (Gierke, note 213). Many writers considered this representative character of the ruler or prelate as complete or "absorptive" (cf. Gierke, notes 121, 122). Such claims to a complete representative character, and therefore unlimited authority, were confronted by the mediæval doctrine of a fundamental law binding upon ruler as well as subject (cf. Bracton, *De Legibus et Consuetudinibus Angliae,* 1250-1267, ed. Twiss, 1871, folio 5b, I, p. 38; John of Salisbury, *op. cit.,* IV, c. 1), and by vaguely recognized rights of the communities represented. The Civilians, following certain sections of the *Digest,* insisted that the Roman emperor had received his power as a grant from the Roman people, and that the basis of political power was still the consent of the *populus* or *universitas* (cf. especially the famous *lex regia,* L.I. *Dig.* 1, 4: *Quod principi placuit legis habet vigorem; utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.* This is a doctrine which could easily be taken over by the constitutional writers. "Ever since the days of the Glossators [the twelfth century], the universally accepted doctrine was that an act of alienation performed by the people in the Lex Regia was for Positive Law the basis of the modern, as well as of the ancient, Empire" (Gierke, p. 39; cf. A. J. Carlyle, *A History of Mediæval Political Theory,* II, ch. 7). A new ruler, or a new line, therefore, could be instituted only through election by the whole *populus,* or by delegates representing the whole *populus.* It was taken for granted that the rights of a community could be delegated as well to a representative assembly, which then stood in the stead of the represented community and exercised all of its powers (Gierke, p. 65). The electors in the Empire were capable of choosing the emperor because there was delegated to them as representatives a right belonging to the whole *populus* (Gierke, note 240). The General Council could act on behalf of all Christendom because it represented all Christendom. The cardinals, when choosing a pope, acted as representatives of the universal Christian community (Gierke, note 194). The fact that individual members of the communities represented had no voice in the choice of their representatives was of no consequence to the writers. During this controversial period, the democratic implications of the doctrine of representation seem to have been buried under this imposing series of fictions. In the radical doctrines of Marsilius, William of Occam, and Nicholas Cusanus, we begin to find some recognition of the democratic implications of representation; but these three are hardly typical of their period. They are prophets of another age which is still centuries off (cf. Emerton, *The Defensor Pacis of Marsiglio of Padua,* Harv. Theol. Studies, VIII, 1920, pp. 23-32; Dunning, *Political Theories,* I, pp. 239, 241; Gierke, notes 233, 215, 235, 238).

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monarchy through all the vicissitudes of parliamentary development, save for a brief period in the seventeenth century. There are additional limitations on the doctrine in practice. The Fathers of the American Constitution believed in representative and republican government, but they feared the populace as they feared original sin. One of their fundamental purposes in shaping the form of the federal government was to break the force of majority rule at its source in elections and in the operation of the government itself. In itself, therefore, representative government need not be republican or democratic. It may be monarchical, or aristocratic, or so designed as to prevent the kind of popular government which operates through simple majorities.

Yet, despite these difficulties of definition, we may say, for the sake of convenience, that the modern idea of representation can be broken into three component parts: (1) a representative person or group has power to act for, or in place of, another person or group; (2) the representative is elected by those for whom he is to act; (3) the representative is responsible for his acts to those whom he represents.

But this analysis is not at bottom as simple as it seems on the surface, and should not be allowed to stand without a caveat. What is this power which resides in the constituency or body politic and is transferred in whole or in part to the representative? At best, it is an elusive fluid. What methods of nomination and election are established by law to govern choice by the voters, and how do they operate in practice? What is responsibility in essence, and how is it to be enforced? Obviously, the representative is more than an agent in the private law sense of the term. He helps to make the ideas and wills which he represents. Often he has to deal with issues which his constituents have scarcely considered, if at all—issues on which they have expressed no will. Hence, when we define representative government in simple terms, as above, we arbitrarily lay out a little land of rational certainty and speak in the language of anatomy. This is not enough, for representative government is merely one phase of the whole process of civilization, and those who speak of it as if it were a Victorian bustle, to be put on or entirely discarded at will, display a woeful ignorance of its history and nature.

From what has been said about the history of the word repre-

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sentation, it may readily be imagined that the philosophy of representative government was unknown to the ancients and but dimly foreshadowed by the writers of the Middle Ages. During the thousands of years which we call antiquity, monarchies, despotisms, dictatorships, tyrannies, democracies, and aristocracies, with numerous variants, rose, flourished, and fell; but nowhere, at no time, did representative institutions appear, at least on any impressive scale. Aristotle, the father of political science, does, indeed, refer once to the fact that democracies, such as existed at Mantinea, did exercise the power of electing magistrates, and thus acted "through representatives elected in turn out of the whole people;" but this reference is casual, and is made in a tone which suggests that the case is exceptional.[8] A modern writer on political philosophy, Jellinek, while claiming that Greek magistrates were regarded as representatives in the execution of policies adopted by popular assemblies, admits that the Greeks had no notion of representation as applied to the creation of legislative assemblies.[9] Even if his first point be conceded, namely, that Greek magistrates were representative in character, it is significant to note that Aristotle lays no great stress on the conception.

In Roman, as well as in Greek, thinking, the idea of representation in government appears only in shadowy forms. Polybius, it is true, speaks of the responsibility of the consuls to the senate and to the people, of the responsibility of the senate to the people, and of the responsibility of the tribunes to the people.[10] Certain passages in Roman law have also been interpreted to imply that the senate was representative in character, that is, spoke for others who were not members of that body.[11] But Polybius does not look upon the Roman officers of state as agents or representatives of the people; nor does the actual composition of the Roman senate lend any color to the view that it was representative in any modern sense, or indeed any strict sense, of the word.

This does not mean, of course, that the theory and practice of agency was unknown to the ancients. "The city," says Ernest

[8] *Politics*, VI, 4, 4 (tr. Jowett).
[9] G. Jellinek, *Das Recht des modernen Staates*, I, pp. 519-520.
[10] F. W. Coker, *Readings in Political Theory*, p. 116.
[11] Gierke, *op. cit.*, note 236.

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Barker, "was not devoid of representative institutions, nor unacquainted with the political machinery which is connected with those institutions."[12] He cites the Athenian council as an example of an elected representative assembly, but admits that it did not have "representative authority," that is, authority "to deliberate and decide as the exponent of the general will within its sphere." Again, the synod of the Bœotian League "consisted of 660 members, elected in equal numbers from the eleven electoral divisions of the League;"[13] but that was more of a diplomatic assembly than a legislature in the modern sense. While it would not be correct to say, therefore, that representation was utterly foreign to Greek and Roman politics, practical illustrations of it were few and must be strained to make any case worthy of serious attention. At all events, modern legislative bodies have no historic connections with Greek and Roman representative agencies.

The starting point of representative government on a national scale, then, is the Middle Ages in time, and the place is Europe. It did not spring up because people suddenly decided to govern themselves, displayed the capacity, and set up parliaments. It was called into being by mediæval monarchs who had established or maintained by the sword political power over wide territorial areas containing a large population socially aggregated into classes and groups and communities. The monarchs who first called representatives of communities or estates to grant money and give counsel were not thinking of democracy; they were concerned primarily with the conservation of the peace, the administration of lucrative justice, and the replenishment of their royal treasuries.[14] Even the most despotic mediæval monarch could

[12] *Greek Political Theory; Plato and His Predecessors*, p. 33.

[13] *Ibid.*, pp. 34-35.

[14] The *witenagemot* and the later *commune concilium* could be considered representative only in the same sense that electoral colleges and assemblies on the Continent were representative (cf. note 7 above, and W. Stubbs, *Select Charters*, 8th Oxford ed., 1905, p. 36). During the thirteenth century, there was injected into this entirely feudal assembly two new elements representative of rising economic interests. The knights, increasing in number and in influence in the local communities, were separating out of the feudal organization and being gradually transformed into the landed gentry which later acquired such a powerful vested interest in Parliament. The town burgesses, also increasing in size, affluence, and influence with the expansion of trade, were also separating out of the feudal system and

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not tax and exploit his subjects without limits; as a matter of expediency also, he had to consider ways and means. The estates and classes that composed the social order under him had interests and sentiments which he could not ignore, save at great peril to himself; and a certain degree of coöperation with them offered the most effective method of gaining his immediate ends. Beyond that he could not see, for practical men are adjusters, not prophets.

The rest of the record is equally clear. Although the several phases are familiar to students of constitutional history, it seems fitting to set down here, in summary form, for purposes of illustration, the principal stages in the development of representative government in England.

1. The first parliaments were called by monarchs primarily for the purpose of voting taxes for the royal treasury. The original parliament did not represent people—free and equal heads—as such, but the estates of the realm (the nobility, clergy, landed gentry, and burgesses of the towns); in a strict economic sense, two estates, i.e., land and commerce.[15] In the early assemblies,

increasing their independence through charter privileges and special "liberties" (cf. G. B. Adams, *Const. Hist. of England,* 1921, pp. 169-170). To align these new economic forces with the monarchy was obviously a matter of necessity and convenience to the king in his dealings with his subjects. "It was the king who imposed upon his subjects the duty of sending him their representatives. Edward I changed an occasional expedient into a regular custom, not in order to associate the whole nation with himself in the work of government, but in order to strengthen the royal power. . . . If in the end he made a practice of summoning them [the Commons] almost regularly, this was because he perceived that the previous consent of the knights and burgesses greatly facilitated the collection of aides and even enabled the government to collect more than would otherwise have been possible" (D. Pasquet, *Origins of the House of Commons,* tr. Laffan, Cambridge, 1925, pp. 225-226. Cf. also Professor Ford's thesis that representative government developed early in England because of the strength of the monarchy. *Representative Government,* 1924).

[15] The device of representation introduced into Parliament in the thirteenth century was, of course, not novel in England. It was a device already in use in the local courts, where service was an obligation to which all were liable, but from which tenants might be excused by the attendance of their lord or another representative. "Representation was not the offspring of democratic theory, but an incident of the feudal system. Suit and service were due from all; but we are told in the *Leges Henrici Primi* if the lord or his steward will go to the county court, his presence will 'acquit' the tenant on his domain. If neither lord nor steward is present, there must come the priest and reeve, and four best men in the township on behalf of their fellows. The boon of representation is not in the

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there was some talking about ways and means of raising revenues (hence the term "parliament"); but discussion was an incident, not a prime end.

2. In time, the tax-voting body became a law-making body, by gradual steps. The members of the estates who were being consulted and taxed had grievances of a practical sort. Sometimes the king laid on too heavily. Sometimes his officers, without his knowledge and against his desires, acted in an arbitrary fashion, extorting extra money from his subjects, imprisoning or fining them in an irregular manner, and otherwise laying exactions, burdens, and inconveniences upon them or depriving them of concrete rights which they had hitherto enjoyed by immemorial custom. Nothing was more natural than that the representatives of the estates, when assembled for purposes of voting taxes, should consider their grievances and come to agreement about them. Hence parliaments soon began to list their protests in the form of petitions to the king for redress. If he approved a petition, it became a law, binding on his officers and subjects. Since the parliament held the purse strings, it could often compel the king to consent, even though it pained him to do so. In due time, the petition was dropped for the bill—a proposed measure drafted in and passed by the parliament. Thus the tax-voting body became a legislature of large powers—everything depending on the character of the monarch and the willfulness of the parliament.

3. The third stage was reached by a gradual process culminating in the revolutions of the seventeenth century. At last, the king was substantially deprived of law-making and tax-voting powers,

election to serve, but in the license to stay away . . ." (A. F. Pollard, *The Evolution of Parliament*, 1925, p. 109). The representatives to the county courts, then, were not popularly elected, but attendance was an obligation of their position rather than a matter of choice. Those eligible (or, more correctly, obligated) to jury service later became electors of the delegates to Parliament. After 1430, this eligibility was determined in the shire by the possession of a forty-shilling freehold. The "best men" of the shire were apparently those with substantial property holdings (cf. Pollard, pp. 153-154; Adams, *op. cit*, pp. 174-175). Only when it was finally realized that attendance at Parliament could be utilized to impose upon the king and the rest of the country a recognition of group interests did the liability of serving become a privilege (cf. Pollard, pp. 158-159). It is interesting to note that even as late as the seventeenth century Coke considered it necessary to state that the king could not exempt a knight, citizen, or burgess from attendance at Parliament, since such attendance "is for the service of the whole realme" (*Institutes*, 1642, ed. 1797, IV, pp. 48-49).

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and his civil and military administration was confined within the limits laid down in constitutional measures. In other words, the estates summoned in the beginning to supply the royal treasury became conscious of their potential powers and transformed themselves into a sovereign body. Their crowning act was to compel the king to choose his chief officers of state, his cabinet or inner council, from the party that had a majority in Parliament. Although an elaborate ideology was developed in the course of this struggle, the operation itself involved a concern with very practical matters, largely economic in character, rather than a moral straining after a general ideal or the best of all possible worlds. When once the ruling classes represented in Parliament gained their ends, they settled down to the enjoyment of the spoils of office in the fashion meticulously described by L. B. Namier in *The Structure of Politics at the Accession of George III.*[16]

4. The economic estates that made themselves sovereign through representative institutions had not long enjoyed the fruits of their labors when rumblings were heard below, among the nameless and unhonored masses that had not shared in the process—serfs who, though rightless in the Middle Ages, had now become freeholders or agricultural laborers, craftsmen in towns, and other persons from whom the suffrage had been withheld. Indeed, these rumblings had been heard early—in the time of the Peasants' Revolt during the Middle Ages, and especially in the tempestuous age when Cromwell was upsetting the throne.[17] But they

[16] London, 1929.

[17] The sixteenth and early seventeenth century writers seemed to feel that Parliament, however the members might have been chosen, was, in some mysterious fashion, representative of every citizen of the realm. Sir Thomas Smith speaks of "the parliament of Englande, which representeth and hath the power of the whole realme. . . . For everie Englishman is entended to be there present, either by person or by procuration and attornies . . . and the consent of the parliament is taken to be everie man's consent" (*De Republica Anglorum*, 1583, ed. Alston, 1906, p. 49; cf. also intro., xxxvi). On the eve of the Civil War, Sir Edward Coke speaks in similar terms: "For the parliament concerning making or enacting of lawes consisteth of the king, the lords spirituall and temporall, and the commons; and it is no act of parliament, unless it be made by the king, the lords and the commons. And where it is said, by all the commonalty, all the commons of the realme are represented in parliament by the knights, citizens and burgesses. . . . Commons are in legal understanding taken for the frank tenants or freeholders of the counties. And whosoever is not a lord of parliament and of the lord's house, is of the house of commons either in person, or by representation . . ." (*Institutes*, IV, p. 1; cf. also pp. 5, 14, 26). This is the conventional point of view taken

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were turned into a loud roar by the French Revolution, whose prophet, Rousseau, declared that all men were equal, and that each one was entitled to an equal share in governing.[18] This, of

by the Puritans and expressed in the resolution of January 4, 1649, in the House of Commons (cf. Adams, *op. cit.*, 321). But to this statement of the supremacy of Parliament as representative of the people the more radical Levellers added two further strikingly modern propositions. They contended (1) that representation in Parliament should be reapportioned on a widened franchise; (2) that all government officials (including representatives in parliament) were subject to *definite* limitations of power for which they might be held responsible by their electors. The *Agreement of the People*, drawn up in 1648 and laid before the Commons in 1649, presents the political theory as well as the immediate demands of the Levellers. Had it gone into effect, it would have set up a limited parliamentary system with manhood suffrage (cf. Gardiner, *Constitutional Documents of the Puritan Revolution, 1625-1660*, 3rd ed., 1906, pp. 359-369). In the debate over manhood suffrage, the Levellers supported their demand by appealing to the "law of God and of Nature"—that is, to the natural right of individuals to equal privileges. The following comes from a speech from Rainborow: "I doe heare nothing att all that can convince mee why any man that is borne in England ought nott to have his voice in Election of Burgesses. . . . I doe nott finde anythinge in the law of God, that a lord shall chuse 20 Burgesses, and a Gentlemann butt two, or a poore man shall chuse none. I finde noe such things in the law of nature, nor in the law of nations" (*Clarke Papers*, I, pp. 304-306; cited by Shepard, *Theory of the Nature of the Suffrage*, 7 *Am. Pol. Science Rev.*, Supp., at p. 120). "We judge that all inhabitants who have not lost their birthright should have an equal voice in elections," insisted another of the radicals. And to this Rainborow added that no man was bound to a government under which he had not placed himself (quoted from Pettus, in Gooch and Laski, *English Democratic Ideas in the Seventeenth Century*, 2nd ed., 1927, pp. 130, 138). In answer to the demand for manhood suffrage, Cromwell replied: "The consequences of this rule tend to anarchy, must end in anarchy. For where is there any bound or limit set if men that have but the interest of breathing shall have voices in elections?" (*Clarke Papers*, I, pp. 309, Gooch and Laski, *op. cit.*, p. 194). Ireton insisted that, in the interest of stability, the franchise had to be restricted to property holders (*Clarke Papers*, I, 301, 302, cited by Shepard, *op. cit.*, p. 121). The opinion of Cromwell and Ireton naturally prevailed. The *Instrument of Government* provided that the suffrage should be restricted to those possessing property to the value of £200, providing that they were "persons of known integrity" and had not opposed the parliamentary party (*Instrument of Government*, 1653, secs. XVIII, XV, VII; Gardiner, pp. 401-411).

[18] Rousseau maintained that sovereign power can reside *only* in the people themselves or a majority of them. It cannot be delegated to representatives. Legislation, being an expression of the *volonté général*, can come only from the sovereign people; that which has not been accepted by a majority of the people themselves cannot be considered law (cf. *Social Contract*, Everyman ed., p. 83). Willing to admit the logical conclusions of his thesis, Rousseau finds that true democracy is possible only in a political unit small enough to permit of legislation by a primary assembly, and that very few modern nations actually have laws (*ibid.*, p. 84). He recognizes the difficulty of applying this city-state theory to modern European countries, and speaks in one place of reconciling theory and fact by the device

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course, was flatly contradictory to the system of English classes, but in time it prevailed—with the gradual extension of the suffrage until in our own time all adult men and women, as such, without regard to property are included within the political pale. And this extraordinary outcome, entirely unforeseen by the founders of representative institutions, was largely the result of a movement of economic, intellectual, and educational forces outside the sphere of legislation and administration.

It was by these stages, speaking cursorily, that we got down to the modern conception of representative government, which may be summarized in the following fashion. Speaking politically, all adult heads are equal and alike, each having an equal share of governing power (whatever that may be). The sovereign power of government is exercised either by constitutional conventions or parliaments composed of deputies elected by the voters. Logically applied, this principle means that the representatives shall be distributed among districts containing substantially the same number of inhabitants, and shall be chosen by majority or plurality vote. Duly assembled, the delegates shall organize themselves and proceed to the exercise of their authority by majority rule. In other words, the political assembly no longer represents estates, classes, or orders as such, but free and equal heads—abstract political persons.

Although there were variations in the theory and many deviations in practice, this conception seemed in a fair way to conquer the world at the opening of the twentieth century. Even China, after living under despotic government for five thousand years, "off and on," as a philosopher once put it, arose from her

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of *federalism* (*ibid.*, p. 85 and note 1). But he does not attempt to develop this idea. The importance of Rousseau and Paine (cf. *Common Sense*, 1776, and *Rights of Man*, 1791) is amply demonstrated by a comparison of their writings with the *Declaration of the Rights of Man* and the later revolutionary constitutions. All assert that sovereignty resides in the whole people; and that every citizen must have the right of concurring in the making of law. But, departing from Rousseau, all concede that this right may be exercised through representatives. Cf. the statement on sovereignty in the constitution of 1791, which is practically a quotation from Rousseau (*Const. du 3 Sept., 1791*, Tit. III, art. 1; Duguit et Monnier, *Les constitutions de la France*, 1925, p. 7; cf. also *Declaration des Droits de L'Homme . . .*, art. 6, *ibid.*, p. 2; *Const. 1791*, Tit. III, art. 2, *ibid.*, p. 7; *Const. Girondine de 1793*, arts. 26, 27, 28, *ibid.*, p. 37; *Const. du 24 Juin 1793*, arts. 25, 26, 27, *ibid.*, p. 69; *Const. 5 Fructidor An III*, arts. 17-20, *ibid.*, pp. 79-80).

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slumbers and tried the parliamentary experiment—with disastrous results. And during the world conflict that broke out in 1914, the most popular slogan was "Make the world safe for democracy." It is true that President Wilson had said in his *Congressional Government* (p. 227), written in 1888, that "the British government is perfect in proportion as it is unmonarchical, and ours safe in proportion as it is undemocratic;" but that was forgotten during the turmoil of battle. All the world was to go over to representative democracy; and for a time, it seemed almost axiomatic in politics.

Yet long before "the great crusade" began, this Euclidian theory of representative democracy had been vigorously challenged in many quarters. Monarchs and landed aristocracies, real and vestigial, from the Baltic to the Mediterranean, resisted its onward march with all the powers of police and ideology as a matter of course. But there were doubts also in countries that had accepted and applied the doctrine with more or less completeness. Conservatives were disgruntled with representative democracy because it seemed to be growing radical, imposing heavy burdens of taxes on large fortunes, and assuming "improper" functions in the nature of social services. Some of their spokesmen—Prins, Benoist, and others—suggested a revision of the canonical creed and the substitution of the representation of economic classes or groups for the representation of free and equal heads.[19] And so zealously did they push their agitation that they

[19] The modern movement for "professional representation" has been popularized, particularly in France, during the last quarter-century by a considerable group of writers. As early as 1896, Benoist argued the fallacy of the doctrine of national sovereignty based upon the traditional system of representation, and urged the election of deputies by voters grouped according to professions (cf. *L'Organisation du Suffrage universel*, 1896; *Les Sophismes politiques de ce Temps*, 1893). More recently, the eminent constitutional jurist Duguit has staunchly defended the doctrine of professional representation. An assembly elected by proportional representation according to numerical party strength must be supplemented, he maintains, by an assembly representing professional groups. "The establishment of proportional representation is not a sufficient electoral reform. The assembly elected according to that system represents only individuals, and all or most of the individuals in political or social parties. But it is not individuals and parties that form a nation; there are other elements that form the inner structure of the social edifice. They are groups founded upon community of interests and of occupation, the professional groups, to use that term in its widest meaning. If one wishes to approach the ideal that all political representation should tend to realize, one

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produced quite a furor among the theorists, particularly in the academic world.

At the other end of the scale, syndicalists and radical socialists made war on representative democracy. They insisted that heads were not, and could not be, free and equal as long as there were great discrepancies in wealth, that elections and campaigns were farcical since the press and schools were on the side of the heaviest economic battalions, and that the mass of the people suffered from poverty and unemployment under the representative scheme of perfection as under all other systems. The social reforms which conservatives denounced as dangerous, socialists and syndicalists condemned as paltry or insufficient, going on to demand yet more revolutionary installments. Despairing of winning adequate majorities to their cause by the ordinary processes of agitation, they began to demand government by economic parliaments—assemblies composed of members representing the proletariat alone, the proletariat organized at the bottom as workers' councils in factories. After the close of the World War, encouraged by the Soviet experiment in Russia, they renewed their onslaught on representative democracy of the type that had become almost traditional.[20] So at the very moment when

must insure the presence in parliament of all the elements of national life; it is necessary to find a place for an assembly elected by the professional groups in addition to the assembly elected by individuals. . . .'' In answer to Esmein's objection that the principle of national sovereignty excludes representation of interests because it would necessitate a division of sovereignty (*Droit Constitutionnel*, 7th ed., I, pp. 312-313), Duguit replies that, far from being in contradiction to the dogma of national sovereignty, professional representation is its logical consequence. ''A parliament cannot be representative of the state unless it includes the two elements which constitute the state: the individual element and the collective element. . . .'' (*Droit Constitutionnel*, 2nd ed., 1911, II, pp. 596-598).

[20] The most outspoken of this group are to be found among the English guild socialists, whose general point of view and specific proposals are stated most thoroughly and consistently by G. D. H. Cole and S. G. Hobson. Society, as Cole views it, is a complex of associations, each one of which is formed by ''a group pursuing a common purpose or system of purposes, by a course of coöperative action. . . .'' Each association, therefore, expresses a particular need, and exists for the performance of a particular function. Each individual's loyalty and interests are divided among a number of such associations, since no one of them can cover the whole sphere of his activity—not even the state, whose claim to ''sovereignty'' the guild socialists thus attack (*Social Theory*, 1920, probably the most valuable contribution which the guild socialists have made to political thought). Upon this theoretical basis, Cole elaborates a program for the organization of

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this institutional device seemed about to sweep the world, it was rudely challenged; its adequacy for the economic tasks of the technological age was questioned in quarters high and low; and the theory that once looked as sound as the multiplication table was everywhere subjected to critical examination.

From this brief and sweeping survey, certain conclusions seem to emerge. Representative government originated in an agricultural age as an instrument of central authority, dictatorial in substance if monarchical in form, to secure the obedient coöperation of classes as yet only dimly conscious of any urge to the exercise of authority. It spread discipline over these classes, drew them into functions not of their own deliberate designing, gave them knowledge and experience in the field of government, and awakened in them a sense of power. At the same time, amazing instrumentalities for the distribution of political information facilitated the transfer of expertness and comprehension

industries into integrated, self-governing guilds (*Self Government in Industry*, 1919, especially pp. 205-227; cf. also *Guild Socialism*, 1920). A system of local, regional, and national communes made up of representatives from the various functional groups would take the place of present governmental structures. While the national commune in its rôle as a "supreme coördinating body" would exercise functions of the present national Parliament, its composition would be closer to that of the Russian Congress of Soviets (*Guild Socialism*, p. 121). Hobson outlines a similar system of nationally organized, self-governing guilds centered in a functionally-chosen guild congress. Parliament, supposedly elected as at present, would be relieved of economic functions. Conflicts of authority between the economic guild congress and the political parliament would be settled by joint committees (*National Guilds, An Inquiry into the Wage System and the Way Out*, 1914; cf. the Webbs', *A Constitution for the Socialist Commonwealth of Great Britain*, 1920). Outside the circle of the guild socialists, Professor Laski has been one of the most persuasive of the "pluralists" who have attacked, along with the doctrine of state sovereignty, the accepted view of representation. Authority, Laski insists repeatedly, must be based upon consent (*Grammar of Politics*, 1925, pp. 29, 62). And this demand for consent cannot be satisfied by the Hegelian assumption that the state embodies the "real will" of its citizens. Popular sovereignty and majority rule, both based upon a monistic view of the state and an Hegelian belief in real will, are untenable concepts (cf. *ibid.*, pp. 29 ff.; *Foundations of Sovereignty*, 1921, pp. 213-214). The only way of securing consent from the welter of conflicting wills which exist in society is by decentralization and federalism—functionally as well as geographically (cf. *Grammar*, pp. 32, 34-35, 263; *Foundations*, p. 242). Provisions must be made for the representation of the functional or associational interests of the individual, as well as for the representation of the individual as an individual (*Authority in the Modern State*, 1919, p. 65; *Grammar*, p. 67). But functional representative bodies will apparently remain advisory or consultative organs (*Grammar*, pp. 72-73, 84, 133, 140, 488 ff., 508 ff.).

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from the monopolists at the center to the very edges of the social periphery. In this way, arbitrary government under royal direction was transformed into parliamentary government resting on a broad popular base. Thus monarchy, which began as a kind of military dictatorship, created for its own uses an agency that ultimately deprived it of sovereignty. Meanwhile, vast masses had become literate and conscious of powers and potentialities. Men who were not by nature political animals were made such by parliamentary discipline. Apparently, by a similar process, illiterate and unconscious masses in other portions of the world may also be transformed into political animals. But, unless there is a general decay of civilization, it is doubtful whether the operation can be reversed, and those once awakened can again be reduced to cogs in an automatic machine deriving its momentum from the center—at all events, for long periods of time as measured by historical standards.

Doubts on this score are accentuated by the course of economic evolution. Since the origin of representative government, the technological revolution has intervened. For various reasons, economic institutions have become highly centralized in the most advanced industrial nations, and governmental activities have multiplied in response to new forces. Conceivably, political functions, confined largely to police and finance, could remain centralized and despotic for a long period in an agricultural society in which economy is localized and self-sufficient, assuming astute management at the center. But when both economy and politics are centralized and cannot proceed effectively without coöperation from top to bottom—wise consideration for popular welfare at the top and loyal coöperation at the bottom—then it becomes doubly doubtful whether it is possible to keep the organism long in motion from heat generated merely at the center. Again we return to a consideration of representative government in evolution as one aspect of the movement of civilization.

Speaking philosophically, the issue before us is not one of attack or defense, but of understanding, as far as our limited intelligence will permit. Speaking practically, the question is one of convenience and utility. Is representative government in any form competent for the tasks of modern society? Is it possible to settle all social conflicts within the limits of law and rationality

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by discussion and public resolution? Can a great society, confronting difficult technological problems, retain the loyalty of its people without drawing them into intimate coöperative relations with its government and national economy? Can any kind of a dictatorship, no matter how benevolent, deal effectively, in the long run, with collective requirements? And finally, in last analysis, will it be found necessary to make modifications in the structure and operation of representative government with a view to reaching a higher technical proficiency? If so, what is to be the nature of those modifications?[21]

[21] While we cannot discern with certainty the exact direction in which representation is moving at present, we can notice a distinct tendency toward the path indicated by some of the pluralists. Economic and social interests have never been content to trust to the omniscience of the representative assembly for recognition of their particular problems. And, as the tangle of conflicting interests has been further complicated in a world of highly mechanized and highly specialized activities, organizations of interest groups outside the representative assembly have become more persistent and effective in pressing their claims (cf. E. P. Herring, *Group Representation Before Congress,* 1927; Peter H. Odegard, *Pressure Politics,* 1928). There has been a noticeable tendency in recent years to bring the lobbyists into the chamber, or to recognize interest groups in at least a consultative capacity. In accordance with Fascist theory of the "corporate state," members of the Italian Chamber are chosen to represent, not individuals, but functional or cultural interests (law of May 17, 1928; cf. C. Haider, *Capitalism and Labor Under Fascism,* 1930). Representatives to the local soviets in Russia come from functional rather than geographic units (cf. W. Batsell, *Soviet Rule in Russia,* 1929). The German Reichstag is supplemented by the National Economic Council, with advisory powers, standing at the apex of a system which, when completed, will form a hierarchy of functional councils (Weimar Const., art. 165; cf. H. Finer, *Representative Government and a Parliament of Industry,* 1923; Prelot, *La Représentation professionnelle dans l'Allemagne,* 1924; L. Lorwin, *Advisory Economic Councils,* 1931). In France, there has been in existence since 1925 a National Economic Council similar in a general way to the German Economic Council (cf. C. Lautaud, *La Représentation professionnelle,* 1927; Lorwin, *op. cit.; ibid.,* "A Federal Economic Council," *New Republic,* April 29, 1931; Léon Jouhaux, "The Economic Labour Council in France," *International Labour Review,* February, 1921). There are at present fourteen countries in which economic councils have been set up or are provided for. These economic councils have assumed a new importance to American individuals and groups who have recently hit upon the idea of economic planning as a way out of industrial chaos. From such divergent sources as the *New Republic* and the National Chamber of Commerce have come proposals for an integration of productive forces through a central economic council representing functional groups (cf. *Report of Subcommittee of the Committee on Manufactures, U. S. Senate, s. 6215—A Bill to Establish a National Economic Council, 1932;* C. A. Beard, *America Faces the Future,* 1932).

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THE NEED FOR THE DEVELOPMENT OF POLITICAL SCIENCE ENGINEERING

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In the early days of factory management, when the problems and conditions were relatively simple, it fell to the lot of all sorts of human folk to manage the various jobs involved. Each used his own peculiar method and, naturally enough, it came into general belief that ability in management was an instinctive knack, that managers were born, not made, that few if any rules could be laid down, and that little could be learned by one from another. Even in the earliest days, a small handful of men called attention to the fact that management measures and forms of organization could be better or worse adapted to their uses; but for generations the suggestion passed unheeded.

As the problems and conditions of factory management grew more complex and exacting, more men came to believe that the art of management was something more than an intuitive and highly personal knack. Before the Great War, a fair nucleus was beginning to study the art from the point of view of the forces involved, and with an eye to causes and effects. And the war experience of manufacturing strange materials, shifting conditions upside down, built up this nucleus into a very fair working minority.

The first studies of management were largely descriptive. Forms of organization and management methods were described in detail, often with the result that those who read would try to take over the plans and the forms and the measures just as they were and apply them to their own tasks. This was the heyday of the organization chart, when the anatomical structure of the organization for factory government was worshipped almost as if it were an end in itself. The troubles that arose when one tried to take over bodily the structure of one corporation or its card systems into a different problem at first set back the whole movement, and then forced studies which were more than merely descriptive. At the present time, we are beginning to accumulate fundamental material to form the basis of an art of

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management, which will be the application of the pertinent social and psychological sciences.

I

Now a factory or business organization is, after all, one sort of social group—a group of human beings, each with his individual nature, attempting to work together for some more or less definite end. A nation or a state is another sort of social group, living together and in no remote sense working together for common ends, whose management is the art we call governing. For the study of this art of governing I am proposing a shift of emphasis comparable to that which has taken place in studying the art of factory management, that is, a shift from the descriptive to the analytical; and from the analytical immediately to the engineering point of view, which focuses upon the natural material and psychological forces found in a given social group and the measures and structures of organization which can be applied to them in order to work toward its fundamental purposes. It is the approach, not of the historian or of the moralist, but of the student of applied science, the engineer.

It will be granted at once that the problem is immensely more difficult than the problems which the nascent art of industrial management has to face; that in fact it is probably the most difficult of all human problems. It will be granted, also, that the sciences which this art of governing must learn to apply are themselves in a germinal, or at best embryonic, state. But two practical considerations outweigh any objections that can be raised.

In the first place, few of the physical sciences advanced much beyond their embryonic stages until applications began to be attempted. Engineers fooled with the laws of physics and chemistry, and tried to make them work somehow, long before those laws were in any solid sense established; and these very attempts to make them work keyed up and directed the pure scientist in his further researches, so that he could elaborate or strengthen or amend these very laws. There is much in the history of the physical sciences to warrant the belief that they never could have grown to their present state unless the engineer had made successful and unsuccessful attempts at application, and had

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brought back the results of these attempts into the laboratory with a demand for further research. It can, therefore, be properly inferred that progress in the social sciences will likewise depend upon earnest, even if sometimes unsuccessful, attempts at the application of what is so far known.

Secondly, there stands the pressing need for progress in the art of governing, and especially in the art of self-governing. No human need today is greater. The very progress itself of the physical sciences and their application has plunged us into a world in which, if we cannot manage ourselves, we may flounder to our destruction. A benevolent and far-seeing czar of all the world might in fact wisely command progress in the physical sciences and their application to stand still until progress in the social sciences and their application should catch up. There being no such czar, progress in physical engineering will continue and so make necessary a still more rapid progress in social engineering.

Four factors have in these modern days combined to bring this need for the study of government from an engineering point of view to the place which justifies the use of the word "overwhelming." First, the development of industrial and commercial processes, intensive and extensive, and the new complications and interrelations of all social and individual life which this development has brought about. Second, the steady reduction, since the great ages of discovery, in the proportion of new lands practicable for settlement—a reduction to a point today at which it is no longer a considerable factor in economic and social life. Third, the growth, intensive and extensive, of the deeply grounded social idea that the final purpose of all government must somehow include the satisfactions of all the people rather than the satisfactions of a god, a dynasty, or a small ruling group. And, fourth (and likely enough derived from the other three), the growth of an underlying demand for more general security, even at the cost of some reduction in the rate of progress in material well-being.

These four factors are enough to warrant the belief that the greatest need of today, and of the next fifty years, is progress in the art of government. The present slogans of the business world which protest against any participation of government

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in economic affairs have many followers; but it is distinctly possible that the complexities and the pervasiveness of economics will force every sovereign government into economic participation, economic influence, even sometimes into economic control. As a matter of fact, ever since the high tide of geographic pioneering, which turned somewhat before the end of the last century, the governments of the world have exerted more and more influence upon economic life; and this largely at the natural demand of first one and then another group of business men themselves. Taking into account this clear trend of the past, and the lessons, both positive and negative, of the great Russian and Italian experiments in the future, it is on the whole a safer guess that we will see from year to year more government in business, rather than less.

But if a governing machine, built to fit the needs of a relatively simple agricultural and trading community, is loaded with the task of participation in an infinitely complex industrial structure, it is as certain that there will be a serious breakdown as that two and two make four. If the structure of the governing organization is to be regarded as sacrosanct and cannot be altered to meet the rapidly changing needs of the modern community, it is true enough that we ought to have less government in business rather than more. But if the trends of the past are any guides to the future, we then find ourselves lost in a dilemma: Government both must and must not increase its participation in the economic life of this nation.

The business answer to this dilemma has in recent years been that business must govern itself; that is to say, when put frankly, that the business world itself must build up a governing structure—a government. But when such propositions are examined in detail in any realistic fashion, problems of enforcement and of relative sovereignty arise which are insoluble. The political community and the economic community interweave and overlap to such an extent that they are indistinguishable. The government of one is in fact the government of the other, and any attempt to bring down to cases a discussion of business self-government forces into clear view the fundamentally anomalous situation in which we find ourselves today.

For it can be said in a very valid sense that the whole of so-

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ciety in the civilized world lives today as one society under two social systems—the economic system and the political system—between which there is practically no effective correlation; two systems which many times become mutually incompatible. If, therefore, it should turn out that the business world can build for itself a government, it will be a wholly justifiable prediction that this business government will be more powerful than, and finally rise over, the political government; in which case we shall finally have a government which not only participates in, but which is, the government of the business and economic world.

But if the probability of this participation of political government in the economic world is discounted to the minimum, there still remains the job of the political world itself to cope with the complexities of modern society. In any case, the crucial need is for a study of the *art* of government, which regards the word "art" as a careful application of scientific knowledge and principles to the realistically analyzed forces of a given social situation.

II

If political science is to furnish the basis for this engineering approach to the problems of government, it must view any community it is studying as a field of forces—psychological, biological, and physical. In view of what it can discover about these forces, it must determine the measures and structure of government which can be expected to use these forces and to relate them so as to bring about development in the direction of the fundamental purpose adopted by and appropriate to a particular social group.

At the very beginning, this fundamental purpose will need clarification, for the purposes of government have been in the past and are today various; and they are not, and have not very often been, clearly known or stated. There have been communities whose deepest purpose was the service of a god or gods, and others whose purpose was the satisfaction, wealth, power, or glory of a monarch. Some have aimed chiefly at the preservation of the status quo; others at defense against aggressive neighbors; some at the preservation or advance in wealth of an hereditary aristocracy or of the owners of property; and others, again, rather vaguely at the spiritual, mental, or material prog-

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ress of the largest number of its people. Whatever the purpose may be, it is important to realize that its nature is from the point of view of an engineer one of the primary determinants of the measures of governing and of the forms of organization which are to be adopted.

Of most concern in the modern world is the vague and ill-defined purpose included in what is often called the democratic ideal. When it is worked out in any definite way, it seems to be a reaching for progress toward the fullest use and growth of each man's powers in the service of his fellows, and the enjoyment of such pleasures as contribute to the refreshment or enhancement of such powers. But it is still so vague as to serve much more often as camouflage for the narrow aims of a small group than as a determinant of government policies.

It is with the true democratic ideal before him that a student of political science writes:

> It seems to me decidedly true that the time has come for a study of government from the following three angles: (1) government as the resultant of certain forces in the community, which forces dictate (a) the direction and objectives of the activity of government, (b) the nature of its structure and its organization; (2) government as an organization for the attainment of certain objectives which are in part devised by government itself and are in part dictated to it from the outside; and (3) government as an agency having power to influence very strongly, and in some instances actually to create, the forces which in turn (a) influence the structure of government, (b) influence the objectives of government, (c) facilitate or impede the ability of government to attain its objectives.[1]

This way of specifying the needed study brings out at once the peculiar difficulties of the task due to the continuous interaction which takes place among the factors involved—the fact that causes do not stay causes, but are themselves altered and affected by their own effects—the principle which in the biological and social sciences has been called the principle of "circular response." These difficulties must be faced from the beginning, and will discourage all but the strong heart. They mean, certainly, that while specialization in so complex a subject is essential, yet integration of the specialized studies must take place, as it were, simultaneously. The engineer in political science will find, as physicians have found, that the specialist is essential to progress but cannot be left to run the show alone.

[1] A letter from Professor John Dickinson.

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III

With some reasonably adequate idea of general objectives, the political science engineer must make progress in his understanding of the forces which must be dealt with; and here, particularly, is a realistic study necessary, for in the first place it is the forces in a given community, not abstract mankind-at-large forces, which are to be known. The stage of education and of culture, the peculiar conditions inculcated by "social inheritance," the special habits of mind and of vocation, make literally all the difference in the world. There are, of course, no two communities, no two nations, and no two states, principalities, or cities within any nation, in which the complex of forces is the same in their aggregate composition—just as there are no two business concerns in which the composition of forces is exactly the same, nor in any single community will they stay always the same, but will change with time and under the influence of such governing measures as are applied to them. The problem is in dynamics, not statics.

The engineer will realize that the powers upon which the government of any community can draw are just those forces which actually exist among its membership. While these original forces may be enhanced, weakened, or re-directed as time goes on, none can be counted upon at any given moment which is not then to be found there.

A government must, therefore, find active among its members sufficient energy arising from biological, or from economic, political, or other social pressures, to serve its main purpose. This necessary energy may be very little, as in an isolated tribe located in a rich country, or very much, as in a nation with an itch for conquest; it may be sufficiently aroused by the pressures of physiological nature or of social tradition, with little interference of a political sort, or it may demand incessant and varied political activity. Whether simple or immeasurably difficult, the problem lies on the front doorstep of any government that, by whatever pressures may yield the most satisfactory net results, the energies sufficient to its main purpose be aroused among its members.

But whether physiological, social, or political, these pressures are upon human beings, and upon just those human beings of

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whom the community is made up; and hence must be so adapted to the natures of just these men and women that there is a net yield of the required results. The practical problem of a government is to know as much as it can about the nature of its peoples and the influences actually at work among them, to judge when, where, how, and how much to interfere with the influences of physiological nature or social custom then acting upon its members, and to decide to what extent to alter, lessen, or add to the pressures it is already exerting.

The principal channels through which a government can bring its measures to bear upon a man are his desires to preserve his life, to avoid pain and discomfort, to mate, to preserve his family, to increase their standard of living, to enjoy companionship and social approval, to satisfy his curiosity and his moral or æsthetic demands. These desires and others which move men will practically never be free to find their satisfactions as they wish. They will be limited by each other, by physical nature, by the struggles of other men to fulfill their own desires, by traditions or unwritten laws, and by government. Just how much or how little any given government should spur, limit, or steer any of these desires is a practical question to be settled with reference to the government's accomplishment of its fundamental purpose. In one case, this purpose may best be accomplished by leaving the control of men's activities to tradition or to their mutual interferences, with little affirmative governmental action; in another case, a different purpose—or even a similar purpose but in a different environment—may be served best by very broad and active government controls. No general principle can be laid down that for all governments and all peoples, under all circumstances, government control is *per se* good, bad, or indifferent.

IV

The measures which a government may use to spur, direct, or limit the attempts of its members to satisfy their desires will include propaganda or propagandist education, tariffs, subsidies, taxes and tax exemptions; it may make regulations as to mating and family life, working conditions, and the rights and duties pertaining to property.

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Many of the measures of a government must, of necessity, be negations and prohibitions. Naturally, where large numbers of corporations, institutions, or individuals are to be dealt with, the chief means of guidance must be negative, since it is more often possible to define the line of undesirable behavior than to select from among a large and rapidly developing variety of possible desirable behaviors the ones best for any individual case. In simple communities, it might be possible to prescribe a goodly bit of a man's life; in complex societies, it is more likely that the definitely undesirable areas will be proscribed, leaving open to individual choice a wide range of neutral or desirable action.

But no regulation expressed in language can be clear in its application to all cases, even in a relatively simple and stable society; a series of interpretations of its application to a variety of cases may after a time give it practical clarification unless changes in conditions take place. In a changing community, judicial interpretations may be almost continuously necessary, leading, perhaps, to periodic alterations in the regulatory measures, each of which in its turn will need its own series of interpretations.

The limits of its appropriate activities are determined by the circumstances in which a government finds itself, and by its purposes. They may extend to the most intimate actions and thoughts of its members in a theocracy whose purpose is the service of a god or gods through obedience to a minute code; they may go almost as far under such a dictatorship as in Russia or Italy today; and so in close gradations the limits may narrow down nearly to zero, as in a moving frontier belt where each man's will and his power to exert it as against any other are the only limitations upon his acts. A people who have come by their early training to desire above all things peace and quiet and security will accept, and in fact demand, a close direction and regulation which would bring a restless folk to revolution.

A government may be doing its best to ensure stability or to cultivate material progress; in most modern communities, it will be doing something toward both of these ends. As a result, unless there is a strong central planning and balancing power, a government will find some of its departments in fundamental con-

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flict, as where the agricultural department urges restriction in planting while another department opens up new lands for cultivation. In this case, as in hundreds of others, some central clearing house with a persistent view to the fundamental purpose must have the facilities for balancing and integrating any differing or conflicting measures. In the simpler static communities, such integration is easy and rarely needed, but as communities grow in complexity, and especially where some sort of progress is part of their purpose, the need grows rapidly.

For protection and stability, a government uses its police and courts, fire departments, insurance, charities, an army of defense, and the like. For material progress, it may build roads, cultivate health, encourage invention, the expansion of business and industry, practical education and research. For spiritual progress, it may encourage schools, the church, and the protection of what it considers moral, and help in the discouragement of what it considers non-moral attitudes and acts. In modern communities, non-governmental agencies and associations will be doing much of this work—for good or ill; any government must take such organizations or efforts into account and decide to encourage, suppress, or let them run; it has responsibility commensurate with its actual power, whether it acts or fails to act.

The total of education—by homes, schools, churches, papers and periodicals, unions, clubs, lecture halls, and political meetings—through personal contacts, radio, and movies, results in what is called a public opinion, which may be vague or concrete, mixed or simple, fixed or changeable, as the circumstances determine. As one of the forces to be taken into account by government, public opinion may be almost negligible, as in an illiterate and phlegmatic society governed by a powerful autocrat, or virtually self-determining, as among a group of energetic pioneer settlers. In either case, it can best be studied as a resultant of the influences which created it rather than as a thing in itself.

The very foundation upon which public opinion at any moment builds itself is the body of beliefs, theories, prejudices, or superstitions with which a people have become indoctrinated early in life, and which have, therefore, gained the strength of habit. Those which result primarily in mental or emotional attitudes we

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may call its traditions; and those which are reinforced by physical activity, its customs. They are not unalterable any more than are other kinds of habits, but they can be changed only when conditions or influences conforming to the laws of habit-change are brought about or bring themselves about.

The abstract validity of theories of government or of human rights—whether they be called moral, legal, or natural—is from a strictly engineering point of view wholly impossible to determine. For the government engineer, the only question of fact is what appeal the various theories make in any given social group —what force they exert or may exert, and, hence, what reactions follow them or may be expected to result from them. For him, the classic question of the violability of contract by a sovereign is the question of the results to be expected in the group in question, if this or that sort of contract is violated. For him, the problems of the rights to liberty, property, or happiness, or the demands of loyal service, are to be subjected to a realistic analysis into the strength of their roots and the probable influence they will exert toward or away from the fundamental purposes of the government. If he is also a student of ethics, he will analyze them with the technique of ethics as well; but as government engineer he must focus upon them as sources of influence among the whole field of forces he has to survey. He will recognize that going theories, like the men who hold them, are the joint product of heredity and environment; immediate changes, therefore, are to be expected only through changes of circumstance or educational influence. And customs, because in them mental habit is reinforced by physiological habit, he will recognize as even more powerful and difficult to change.

V

It is with a view to the attainment of its fundamental purpose, and with an understanding of the physical and psychological forces which it can call forth from the people, that the problems of governmental structure are to be approached. It is as true in government engineering as in any other branch of organization engineering that structure is most wisely to be considered as a means, not an end. But since its structure affects both the members of an organization and the effectiveness of its operating

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measures, it must, therefore, be determined and judged by its effectiveness, through its influences upon men and measures, in accomplishing the purposes the community holds.

Not infrequently, an intense enthusiasm for a given structural form will fuse or confuse it with purpose; it is vital to government engineering that the two, if actually different, should be kept clearly separate, or if one and the same, should be so understood. For it is as easy for men whose real purpose may be the goal of the utilitarians, and who have seen a democratic form work their way in one case, to make democratic forms their goal in all cases, as it is for aristocrats whose real purpose is to preserve aristocracy as a form to convince themselves that they are doing it for the "greatest good of the greatest number." Democracy, if thought of as a form of governmental structure, must submit to a practical inquiry as to whether it is the form for any given group through which the accomplishment of its purpose may be made most likely or least difficult. Democracy, however, is sometimes implicitly regarded, not so much as a form, but rather as the determination, for better or for worse as may happen, by the whole of a group of people of their own behavior. When this idea is made explicit and there is actually no other fundamental purpose but self-determination intended, then structure and purpose are more nearly one, and the main problems are as to what details of structure help most in the determination by a people of their own course of life.

In any government there will be a number of different activities through which the main purpose is to be striven for; in a complex society, these will be many and varied. In any group, therefore, larger than a patriarchal household, more than one man will be needed, and work and responsibilities must be apportioned—the structure of government must be departmentalized. To decide how this can best be done involves a listing of the tasks and analysis of the physical means and the human abilities demanded by each of them. But only in the simplest and most stable societies can these separate tasks, once provided for, be left without constant re-direction and coördination with each other. This demands their grouping into sub-sub-departments, and these into sub-departments and again into departments, which themselves must be related together in some one or another effective

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way. Moreover, as structure increases in complexity there is need of many cross relationships among many of its primary and secondary groupings which fall under different departments.

Departmentalizing is so fundamentally necessary as to be practically universal in any governing task which is beyond the powers of one man. The main principles which direct its best use have, therefore, been worked out through wide experience; although in changing communities, with their changing and enlarging tasks and the growing differences in their inter-relationships, the reorganizations needed to make application of these principles take place very slowly. Much less thoroughly worked out are the methods and principles by which coördination among departments and sub-departments can be attained. This becomes especially necessary and especially difficult as a society comes to rely less and less upon physical compulsion and threats of compulsion, and as its governmental undertakings become more varied. In modern communities where economic projects, and where the facilities of communication, cross and recross those state lines and national lines which set bounds to the limits of government authorities, the needs for coördination have far outrun the development of its technique.

Since any government structure is made up of men, men must somehow be selected for its tasks. The selection may be by birth —an eldest son, a youngest son, or a daughter—by tests of strength of fighting power, by appointment, by examination casual or elaborate, by lot, or by joint action of some designated people, that is, by election. The choice of method is a practical problem involving consideration of the nature of the place to be filled, the nature of the folk in the community, the existing government structure and the purpose it serves.

But, to be adequate, any method of selection must include a sufficient knowledge of the qualities and abilities the task calls for and the individual characteristics of the men from among whom selection is to be made. Some tasks, especially in modern communities, will need for their fulfillment a considerable degree of public support, and will require of the men who undertake them qualities which can call forth public acceptance; these will, therefore, be filled often by some more or less general election. The principles of government organization will demand, how-

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ever, that such places be not complicated by adding to them tasks for which special technical abilities are needed. The guiding principles, indeed, of all departmentalizing, or specific task-setting, require that each job be determined upon, so far as is possible, in such a way that it will be reasonably likely that men able to do it can be drawn from the available material. For most of the separate tasks necessary to be performed in the management of a modern state, this is not difficult; the main trouble has been how to define the requirements of the job and analyze the characteristics of the possible candidates so that an adequate selection machinery might be set up.

For the efficient performance of a task, as well as for the proper selection of its performer, a clear definition of it is essential; and not merely of the task conceived of separately, but of its relationships to other tasks as well. It is often easy to forget that an essential part of each separate task is to maintain all proper coördinate relations with other tasks. Any type of analysis or cutting up into parts seems to exert a fascination which specializes and particularizes the mind, and so delays and interferes with the companion process of synthesis.

Finally, if the structure of a government is to be fitted to its people and its purpose, it must take into account the probabilities of changes that may occur. In settled and relatively isolated societies, change may be very slow. But in newer communities and those where considerable changes in educational technique, in population, in economic environment, or inter-community relationship, take place, provision for appropriate steps in structural reorganization are essential. It is very rare that a governmental structure suited to one set of circumstances is well suited to any other. As early as 1901, Lord Bryce said: "Nobody now discusses the old problem of the Best Form of Government, because everybody now admits that the chief merit of any form is to be found in its suitability to the conditions and ideas of those among whom it prevails."[2] The penalty of undue stability must, therefore, be confusion, revolution, rebellion, or conquest.

It is perfectly obvious that much fuller stores of knowledge than we now hold must be at our command before any application of political science fit to be called engineering can be made.

[2] *Studies in History and Jurisprudence* (Oxford Press, 1901).

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Yet all the applied sciences have grown from inadequate beginnings by instant progressive attempts to make useful application of whatever is known. It is these attempts and their inadequacies and partial failures which have given impulse and direction to the search for the needed facts and to the experiments in method. It seems impossible to develop an engineering art otherwise. It is none too early, then, for the beginnings to be made in the application of scientific knowledge and method to the art of governing—in the development of an objective and realistic Political Science Engineering.

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CONSTITUTIONAL LAW IN 1930-31

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1930

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A. QUESTIONS OF NATIONAL POWER

I. FEDERAL AMENDMENTS

In November, 1930, Judge William Clark of the United States district court in New Jersey achieved nation-wide notoriety by a decision holding that the Eighteenth Amendment was not properly ratified and is therefore not a part of the Constitution. A prosecution had been brought against one Sprague, under an indictment charging unlawful transportation and possession of liquor in violation of the Volstead Act. This indictment Judge Clark quashed on the ground that the Eighteenth Amendment upon which the Volstead Act rests should have been ratified by conventions called for that purpose in three-fourths of the states, rather than by the legislatures of those states. This conclusion he supported by a long argument emphasizing the fundamental character of the constitutional change effected and the importance and necessity of having such a change accomplished by the agency of representatives elected by the people of the several states for that specific purpose. An appeal from Judge Clark's decision was at once taken by the government under the provisions of the Criminal Appeals Act of 1907. In fact, it was to meet just such situations as this that the act of 1907 was passed; for without the possibility of such appeal a decision of a lower federal court adverse to the constitutionality of a federal criminal statute might be final within the district concerned. No question of double jeopardy is raised by this procedure, since the accused is not placed in jeopardy until the trial jury is sworn and the quashing of the indictment occurs long before that point is reached.

The principal question raised in the minds of interested followers of this case was not whether the Supreme Court would sustain Judge Clark, for few believed that possible, but whether the Supreme Court would follow the precedent set in the much more impressive National Prohibition cases and render a decision without writing an opinion. The case of United States v. Sprague was, however, handled like any other, and a brief opinion was written by Mr. Justice Roberts reversing Judge Clark's decision and upholding the Eighteenth Amendment against the attacks made upon it.[1]

Judge Clark's elaborate opinion received scant respect either in the

[1] 282 U.S. 716, 1931.

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arguments on appeal or in the opinion of the Supreme Court. It is described, somewhat contemptuously one feels, by Mr. Justice Roberts as resting upon a resort to "political science," the "political thought" of the times, and a "scientific approach to the problem of government." And he adds that "the appellees do not attempt to justify the lower court's action by the reasons it states, but by re-submitting to us those urged upon that court and by it rejected."

The arguments urged upon the Court in behalf of Sprague and considered by it were two in number. The first was that it is reasonable to infer from the debates in the Convention of 1787, and from the final decision of that body to submit the Constitution to conventions rather than state legislatures for ratification, that the framers intended that any amendments affecting the liberty of the citizen should be ratified in the same way, i.e., by conventions. It is admitted that less fundamental changes—those dealing with governmental structure or machinery—may be ratified by state legislatures. The second argument is based on the Tenth Amendment, which reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This means that the people reserved to themselves powers over their own personal liberty, that the power to diminish that liberty cannot be transferred to the federal government by the agency of state legislatures (which are assumed to be less reliable representatives of the people than conventions), and that therefore Article V never gave Congress unrestricted power to choose the method of ratification of a proposed amendment.

The Court disposed of these arguments in order. First, Article V is entirely clear and free from ambiguity, and it is wholly unnecessary to import into it qualifications or restrictions based upon the supposed intentions of the framers. It states plainly that a proposed amendment becomes a part of the Constitution "when ratified by the legislatures of three-fourths of the states or by conventions in three-fourths thereof, *as the one or the other mode of ratification may be proposed by the Congress.*" This means precisely what it says. Congress has sole and exclusive discretion in choosing the method of ratification. To adopt the construction urged upon the Court would amount to adding to the sentence in Article V above quoted the following clause: "as may be appropriate in view of the purpose of the proposed amendment." No such addition to the Constitution can be made. If the framers had wished to provide that different types of amendments should be ratified in different ways, it would have been simple to say so in such a way as to avoid any uncertainty. There is no evidence that they wished to control the discretion of Congress delegated by Article V.

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In the second place, the argument based on the Tenth Amendment rests upon a misapprehension of the meaning and purpose of that Amendment. Article V delegates certain powers to Congress with respect to the choice of methods of ratification of amendments. The Tenth Amendment is a mere confirmation of the distribution of powers made by the original Constitution. "It added nothing to the instrument as originally ratified and has no limited and special operation, as is contended, upon the people's delegation by Article V of certain functions to the Congress."

In the third place, the Court emphasizes that every amendment thus far adopted has been ratified by state legislatures. Answering the contention of the appellees that all these amendments save the Eighteenth have dealt with governmental means and machinery rather than with the rights of the individual citizen, the Court suggests: "But we think that several amendments touch rights of the citizens, notably the Thirteenth, Fourteenth, Fifteenth, Sixteenth, and Nineteenth, and in view of this, weight is to be given to the fact that these were adopted by the method now attacked."

II. LEGISLATIVE POWERS

1. *Interstate Commerce*

A somewhat technical case involving the constitutional range of the Interstate Commerce Commission's power over the issuance of railroad securities is University States v. Chicago, M., St. P. & P. Ry. Co.[2] which, after re-argument, was decided by a vote of five to three, the Chief Justice not sitting.

In 1925, the Chicago, M. & St. P. Ry. Co. passed into the hands of receivers. A plan for reorganization was evolved which comprised the creation of a new company, the defendant in the present action. The stockholders of the old company were allowed to participate in the reorganization by depositing their stock and a supplementary cash payment for each share. From these cash payments $4 per share was to be set aside, of which $1.50 was for the compensation of the reorganization managers and the financing bankers, and the remaining $2.50 was to cover costs of foreclosure, court allowances, and sundry similar charges. Funds not used for these purposes were to be paid to the new company. Under the provisions of the Transportation Act of 1920, the consent of the Interstate Commerce Commission was necessary to the issuance of the stock of the new corporation. The Commission authorized the issuance of the new securities, with the proviso that the fund accruing from the

[2] 282 U.S. 311, 1931.

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payment of the $4 per share should not be paid out unless authorized by the Court in respect to payments subject to its jurisdiction or by the Commission. The Commission thus sought to reserve the right to prevent the payment of exorbitant compensation to the reorganization managers.

The majority of the Court, speaking through Mr. Justice Sutherland, held this proviso void as being beyond the power which Congress had granted, or could constitutionally grant, to the Commission. The agreement as to the compensation of the managers was a purely private contract affecting property rights, and wholly dissociated from interstate commerce or the rights and duties of the carrier with respect to that commerce. The contract for the compensation had been held valid by the Court, the parties to it were entitled to have it carried out, and the attempt of the Commission to obstruct or delay execution was an arbitrary interference with liberty of contract and a deprivation of property. The fact that the act of 1920 allows the Commission to permit the issuance of railroad securities "upon such terms and conditions as the Commission shall deem necessary or appropriate to the premises" does not allow it to grant the permission subject to a condition which is unconstitutional. The court then held that the Commission's order with respect to the $4 fund was separate and distinct from the main provisions of the order, and that accordingly the permission to issue securities remained in force without the void proviso.

A vigorous dissent by Mr. Justice Stone, concurred in by Justices Holmes and Brandeis, insisted that the Commission was well within its statutory and constitutional powers in seeking to supervise the costs of the railroad reorganization, inasmuch as those costs have a direct bearing upon rates and upon the recapture of earnings under the act of 1920. He further protested that if the Commission's proviso with reference to the $4 fund be held void, the Court should have remanded the whole case back to the Commission for reconsideration, since the evidence seemed to indicate, and it was logical to infer, that the Commission would not have issued the major order authorizing the security issue if it had not believed that it had power to attach the condition to its permission.

2. *National Taxation*

Federal Taxation of State Agencies or Interests. The vexed question whether various federal taxes unconstitutionally impinge upon state agencies, functions, or interests arose in several cases. In Willcuts v. Bunn,[3] the Court, speaking through Chief Justice Hughes, held that profits accruing from the sale of county and municipal bonds are properly subject to federal income tax, even though the bonds themselves, to-

[3] 282 U.S. 216, 1931.

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gether with the interest on them, are exempt. "The power to tax," said the Court, "is no less essential than the power to borrow money, and, in preserving the latter, it is not necessary to cripple the former by extending the constitutional exemption from taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the governmental instrumentality and there is only a remote, if any, influence upon the exercise of the functions of government." There is a sharp distinction between a tax upon the interest from bonds where the "tax falls upon the owner by virtue of the mere fact of ownership, regardless of use or disposition of the security" and a tax on profits from the sale of the bonds, which is "an excise upon the result of several factors including capital investment and, quite generally, some measure of sagacity." The sale or transfer of the bonds between private persons is not intimately connected with the borrowing power of the state or municipality. Such sales are not instrumentalities of the state; and a tax laid upon such sales is not different in theory or effect from a tax laid upon the right to transmit such bonds by inheritance, a tax long held valid. In neither case is any burden laid upon the borrowing power. Finally, the uniform and long-established practice has been against exempting from taxation gains accruing from sales of either federal or state bonds, and weight is attached by the Court to that fact.

An attempt was made in Group No. 1 Oil Corporation v. Bass[4] to secure the exemption from federal income tax of income from the sale of oil and gas produced under leases of state lands granted by the state of Texas. Such leases, it was alleged, are state instrumentalities in the form of privileges, and may not, therefore, be burdened by federal taxation. The Court, speaking through Mr. Justice Stone, rejected this contention and upheld the collection of the tax. The state courts had previously held that the leases in question were, in point of law, really *sales* to the lessees of the oil and gas in the land, and this construction is accepted by the Supreme Court. While it has long been established that the federal government may not tax the sale or lease by a state of its property, it is equally clear that one who purchased land or any interest in it from a state cannot claim immunity from federal taxation merely because it was once owned by the state.

It was held in Indian Motorcycle Co. v. United States[5] that a federal sales tax imposed in the Revenue Act of 1924 could not validly be levied upon the sale by the plaintiff of a motorcycle to the city of Westfield, Massachusetts, for the use of the police department. The opinion of the Court, written by Mr. Justice Van Devanter, relies upon the case of

[4] 283 U.S. 279, 1931. [5] 283 U.S. 570, 1931.

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Panhandle Oil Co. v. Mississippi,[6] in which a state tax upon the sale of gasolene to the federal government was held void. Both cases rest upon the doctrine that "the instrumentalities, means, and operations whereby" the federal and state governments exercise their governmental powers are exempt from taxation in each case by the other government, and that the immunity is not dependent upon "the amount of the particular tax or the extent of the resulting interference, but is absolute." It is immaterial here that the tax is levied on the seller rather than on the buyer of the motorcycles. It is in effect a tax on the sale, and the purchaser, the municipality, is an essential party to such sale. The purchase is an exercise of governmental power, and is therefore immune from federal taxation. Mr. Justice Stone dissented, on the ground that the tax should be regarded as levied on the seller rather than on the purchaser. If that is sound, then the only ground for exemption from the tax would be that real and substantial interference with a government function or instrumentality can be shown. That there is no such resulting burden on the city is evidenced by the fact that it cannot be shown how the city would be benefited in any way if the plaintiff were exempt from the federal tax on the sale of the motorcycle, as well as by the fact that the city has not joined the plaintiff in complaining of the tax. Mr. Justice Stone also urges that the tax should be regarded in accordance with the language of the statute as a tax upon the importation, production, or manufacture and sale of the motorcycle instead of the sale alone, a construction which would distinguish the case technically from the Panhandle Oil Co. case and make it difficult to defend exempting the transaction from the federal tax. Mr. Justice Brandeis concurred in the dissent, while Mr. Justice Holmes joined with the majority only because he felt that Panhandle Oil Co. v. Mississippi governed the present case.

It will hardly be denied that the Court's decisions in recent cases provide no satisfactory solution of the problem of inter-governmental taxation. We remain under the domination of an epigram—"the power to tax involves the power to destroy"—and the Courts have so strictly applied it that both the federal and state governments at present are obliged to forego lucrative sources of revenue from taxes technically imposed on government functions and instrumentalities without any compensating advantage to the government in whose behalf the exemption is enforced. We should be in a much sounder position if we should adopt in the case of all taxes questioned on this ground a rigidly pragmatic test of actual burden or discrimination, and permit the collection of all taxes the imposition of which cannot be shown to be a genuine burden or obstruction upon the government of state or nation. This may be done safely if it be

[6] 277 U.S. 218, 1928. See comment in this REVIEW, vol. 23, p. 99.

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borne in mind, as Mr. Justice Holmes so aptly put it, that "the power to tax is not the power to destroy while this court sits," and that any abuse of the power of taxation as it affects government agencies can promptly be checked by judicial action.[7]

3. *Navigable Waters*

The efforts of Arizona to prevent the carrying out of the Boulder Dam project met defeat in the Supreme Court in the case of Arizona v. California,[8] in which a permanent injunction to restrain the construction of the dam was sought. The Secretary of the Interior and the states of Nevada, Utah, New Mexico, Colorado, and Wyoming were joined with California as defendants. The history of the controversy is familiar. In 1921, after several years of informal discussion, the seven states having an interest in the Colorado River chose commissioners to draft an interstate compact affecting the use of the water of that river. In 1921, Congress gave its approval to the plan for an agreement and appointed a representative to act for the federal government. In 1922, these commissioners and the federal agent signed an agreement to be effective when approved by Congress and the legislatures of all the states concerned. In 1928, Congress passed the Boulder Canyon Project Act[9] and approved of the interstate agreement with certain modifications; authorized the Secretary of the Interior to construct at Black Canyon a dam, a storage reservoir, and a hydro-electric plant; provided for the operation of these projects subject to the terms of the compact between the states; and specified that the approval by Congress of the compact should be effective when ratified by the legislatures of California and at least five of the six other states. All the states but Arizona ratified the compact, and the Boulder Canyon Project Act was proclaimed in force in 1929.[10]

The attack of Arizona on the project rested on two grounds. In the first place, the state laws require that permission be secured from the state engineer before such a dam be erected within the state. It is conceded that half of the dam and reservoir will be in Arizona. This require-

[7] A number of cases presenting somewhat technical questions bearing on the federal power of taxation may be mentioned without discussion. Due process of law in tax collection procedure is involved in Graham v. Goodcell, 282 U.S. 409, 1931. Milliken v. United States, 283 U.S. 15, 1931, and Klein v. United States, 283 U.S. 231, 1931, hold valid under due process the application of the provisions of the federal estate tax to gifts made in contemplation of death before the enactment of the statute. Denman v. Slayton, 282 U.S. 514, 1931, holds that there is no constitutional basis for claiming exemption from federal income taxation of interest on funds used for the purchase and holding of tax-exempt municipal bonds.

[8] 283 U.S. 423, 1931.

[9] 45 Stat. at L. 1057, Act of December 21, 1928.

[10] Proc. of June 25, 1929, 46 Stat. at L. 20.

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ment of state permission applies to the United States as well as any other persons, since the federal government has no constitutional authority to proceed without it. The allegation that the federal government is proceeding in exercise of power over navigable rivers is denied on the ground that the Colorado River is not navigable. The Court, speaking through Mr. Justice Brandeis, rejects this contention. The river was once navigable, may become so again, and the federal statute here involved specifically declares part of its purpose to be the improvement of that navigation. The Court may not look behind that declaration of purpose nor assume it to be a subterfuge merely because other purposes, such as the storing of water for irrigation and the generation of electric power, are also provided for. Congress is therefore engaged in the exercise of a constitutional power, and the permission of Arizona is wholly unnecessary.

In the second place, it was urged that the project threatens the quasi-sovereign rights of Arizona by preventing it from permitting or forbidding under its laws the appropriation of unappropriated waters. This argument is rejected because of the unreality of the threatened injury. The federal act in no way impairs state authority over waters not immediately involved in its provisions, and there is no evidence of any power or intention to control in any general way the state's authority over its waters. The bill for injunction is accordingly dismissed without prejudice to the right of Arizona to seek relief "in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under it, of any rights already perfected, or with the right of Arizona to make additional legal appropriations and to enjoy the same."

III. JUDICIAL POWER

The strictness with which the Court protects itself against requests to answer broad and general questions of law not presented to it in fully argued cases is emphasized in White v. Johnson,[11] in which the Court declined to answer five questions certified to it by the circuit court of appeals. These related in a broad way to the power of the Federal Radio Commission to revoke certain radio licenses under conditions set forth. The questions were rejected on the ground that under its rules the Court will answer certified questions only when they are "distinct and definite," and that a question does not meet this test when it would "admit of one answer under one set of circumstances and a different answer under another."

It is held in United States v. Benz[12] that the judicial power of a federal court includes the power to change a sentence of imprisonment

[11] 282 U.S. 367, 1931. [12] 282 U.S. 304, 1931.

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during the term of court in which it was imposed, by shortening the period of imprisonment, even after the service of the sentence is begun. This is a judicial act, just as much as the imposition of the original sentence, and in no way usurps the executive power of pardon, which bears upon the enforcement of the judgment and not the nature or terms of the judgment.

The question how far a federal court in a case arising out of diversity of citizenship is bound to follow state law is raised in Herron v. Southern Pacific Co.[13] In a damage action for personal injuries, the federal district court in Arizona directed a verdict for the defendant railroad, a Kentucky corporation, on the ground that the evidence showed the plaintiff guilty of contributory negligence. The constitution of Arizona specifically states that in such cases the question of contributory negligence, or assumption of risks, shall "in all cases whatsoever be a question of fact and shall, at all times, be left to the jury." The Supreme Court held that the district court was not bound either by the Conformity Act or the Rules of Decision Act to conform to the state requirement. The state rule goes beyond a mere matter of practice or form and effects an essential change in the character and function of a federal court.

In New Jersey v. City of New York,[14] an injunction was sought by the plaintiff state to restrain the city from dumping garbage into the Atlantic Ocean at points ranging from eight to twenty-two miles from land, which points had been approved by the federal supervisor of harbors. The garbage, it was alleged, floated or was blown inshore, and constituted a public nuisance, seriously affecting municipalities and private property owners on the New Jersey coast. A special master appointed by the Court confirmed these allegations. The Court issued the injunction prayed for. It set aside the city's contention that since the garbage was dumped outside any territorial waters, the Court had no jurisdiction. The defendant city, as well as the property alleged to have been injured by the nuisance, are within the Court's jurisdiction, and that is all that is necessary. Nor can the city plead any immunity under the permission granted by the federal harbor authorities, since such authority does not extend to the sanctioning of a nuisance.

IV. FEDERAL BILL OF RIGHTS

1. *Jury Trial*

Two cases at the present term present problems affecting jury trial in the federal courts, in each instance the courts of the District of Columbia. In Aldridge v. United States,[15] the Court, speaking through

[13] 283 U.S. 91, 1931.
[14] 283 U.S. 473, 1931.
[15] 283 U.S. 308, 1931.

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Chief Justice Hughes, held that a negro on trial for killing a white man is entitled to have jurors asked on *voir dire* examination whether they have racial prejudice which might prevent the giving of a fair and impartial verdict. To refuse to allow the asking of this question constitutes reversible error, even in a jurisdiction where negroes and whites have the same privileges at law. The Court said: "Despite the privileges accorded to the negro, we do not think that it can be said that the possibility of such prejudice is so remote as to justify the risk in forbidding the inquiry. And this risk becomes most grave when the issue is of life or death." While it seems reasonable to assume that the issue here raised might be raised to the dignity of a question of due process of law, it will be noted that the case goes upon a point of procedure, the specific holding being that the trial court had erroneously used its discretion in respect to the examination of the jury. Mr. Justice McReynolds dissented on the ground that there appeared no evidence of doubt as to the guilt of the accused and that the chance of race prejudice was too remote to warrant reversal.

In District of Columbia v. Colts,[16] the Court holds that the offense of driving an automobile at a forbidden rate of speed so as to "endanger property and individuals" constitutes so serious a crime that one charged with it must be accorded a jury trial on demand. It had been assumed by the court of the District that such an offense, a violation of traffic laws, was a petty offense which could be tried summarily without a jury. What constitutes a petty offense, in contrast to one triable by jury, depends upon the nature of the offense. The offense here charged is "not merely *malum prohibitum* but in its very nature is *malum in se*. . . . It is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense." It falls, therefore, in the category of grave offenses to which the constitutional guaranty of trial by jury must apply.

2. *Searches and Seizures*

In Go-Bart Importing Co. v. United States,[17] a search of premises and seizure of evidence conducted by federal prohibition authorities was held unreasonable and the use of the evidence forbidden. The circumstances were these. Under a warrant void in itself for want of sufficient recital of facts, but purporting to authorize the arrest of two officers of the Go-Bart Corporation, federal officials entered the offices of the company. Falsely asserting that they had a lawful warrant for the arrest of the two men as well as a warrant for the search of the premises, they made the arrest and by threats forced the owners to open desks and safes. The entire premises were ransacked and the papers, documents, and

[16] 282 U.S. 63, 1930.

[17] 282 U.S. 344, 1931.

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files were then taken by the federal officials and used against the accused as evidence. A vigorous opinion is written for the Court by Mr. Justice Butler, who brands the whole proceeding as unlawful. The search without warrant could not be justified as an incident to a lawful arrest, since the arrest was unlawful. "It was a lawless invasion of the premises and a general exploratory search in the hope that evidence of crime might be found." The government is accordingly without power to use the evidence against the accused, and they are entitled to a new trial on that basis.

The case of Husty v. United States[18] reëmphasizes the doctrine of Carroll v. United States[19] that a warrant is not necessary for the search of an automobile, provided there is probable cause for believing that it is being used in violation of law. It also throws light upon the meaning of probable cause in such cases, by applying to the facts of the case the previously stated rule that legal evidence of suspected crime is not essential, but merely such information as would lead "a reasonably discreet and prudent man to believe that the law had been violated."

V. STATUTORY CONSTRUCTION

1. *Naturalization*

The case of United States v. Macintosh[20] holds that an alien must be denied citizenship if he attaches to his oath of allegiance to the United States the proviso that he will not bear arms in any war which he deems to be morally unjustified. Macintosh is professor of theology in Yale University, a Canadian by birth, with an honorable war record achieved in the World War. The only ground of attack upon his petition was the reservation which he insisted upon attaching to the oath, and which he put in these words in response to the questions asked at the hearing: "I am willing to do what I judge to be in the best interests of my country, but only in so far as I can believe that this is not going to be against the best interests of humanity in the long run. I do not undertake to support 'my country right or wrong' in any dispute which may arise, and I am not willing to promise beforehand, and without knowing the cause for which my country may go to war, either that I will or will not 'take up arms in defense of this country,' however 'necessary' the war may seem to be to the government of the day." He added that he was not a pacifist, but that he could not put allegiance to the government of any country before allegiance to the will of God, and that his position, as stated, was the only one consistent with what he regarded as the moral principles of Christianity.

[18] 282 U.S. 694, 1931.
[19] 267 U.S. 132, 1925. For comment, see this REVIEW, vol. 20, p. 87.
[20] 283 U.S. 605, 1931.

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It will be noted that the case raises no constitutional question, but merely one of the interpretation to be placed upon the pertinent sections of the naturalization statutes. These provisions require an "oath in open court that he will support the Constitution of the United States . . . that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same," and also specify that it must be made to appear, upon the evidence of witnesses, that the applicant, besides having good moral character, is "attached to the principles of the Constitution of the United States. . . ." To determine the *fact* of such attachment, the proceedings before the court include the answering of written questions as well as possible oral interrogation. One of these written questions is: "If necessary, are you willing to take up arms in defense of this country?" It was in reply to this that Professor Macintosh interposed his statement of reservation. The issue in the case is whether Congress, by its provisions, intended to exact of an applicant for naturalization an unqualified promise to bear arms in time of war. On this, the Court divided five to four. Speaking for the majority, Mr. Justice Sutherland held that the reservations made by Macintosh vitally impaired his oath. War seems inevitable, and Congress must be able to wage it. Such immunities as Congress has seen fit to grant to certain types of conscientious objectors are based on policy, not legal rights of the individual, and do not extend to the applicant for naturalization unless Congress so legislates. The applicant's moral scruples are not to be seriously considered. His allegiance "to the will of God" means, after all, his allegiance to "his interpretation of the will of God," which may not, we infer from the opinion, be the will of God at all. The nation must survive, and we must therefore proceed on the assumption "that unqualified allegiance to the nation and submission and obedience to the laws of the land, as well those made for war as those made for peace, are not inconsistent with the will of God." The courts cannot make bargains with those who seek naturalization. They must accept without qualifications the terms upon which citizenship is offered. Any doubt as to such acceptance must be resolved against the applicant.[21]

Chief Justice Hughes wrote a vigorous dissenting opinion, concurred in by Justices Holmes, Brandeis, and Stone. It is urged that none of the language used in the naturalization statutes indicates by reasonable implication any intention upon the part of Congress to exact as the price of citizenship an unqualified promise to bear arms. In view of the other positive and negative qualifications exacted of the applicant for naturali-

[21] The Court's decision in U.S. v. Schwimmer, 279 U.S. 644, 1929, is quoted at length and heavily relied upon. For comment, see this REVIEW, vol. 24, p. 86.

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zation, the omission of the requirement of such a promise, in plain words, is significant. The oath of allegiance required in naturalization is in substance the same as the oath required by statute of all civil officers, except the President, who takes an oath prescribed by the Constitution itself. The Constitution states with respect to the statutory oath that "no religious test shall ever be required as a qualification to any office or public trust under the United States." The history of the attitude of Congress toward questions of freedom of conscience upon the part of Quakers and others having religious scruples against war precludes the belief that such persons were regarded as disqualified from holding office because they could not take the oath required. The consistent policy of our government has been to recognize and give effect to religious scruples, and it should require strong evidence rather than vague implication to conclude that "Congress intended a reversal of its general policy in prescribing the general terms of the naturalization oath." There is no evidence to that effect.[22]

The case of United States v. Bland[23] was decided by the same division of the Court as upon the doctrine of the Macintosh case. Miss Bland was a Canadian who during the war had served for nine months at the front as a nurse. She had religious scruples against bearing arms, and refused to swear that she would do so. Her petition was accordingly denied.

It should be kept in mind that it is within the power of Congress to change the situation created by these decisions by forbidding the exacting of an oath which would bar from citizenship those who have conscientious scruples against bearing arms.

2. *Commerce and the Interstate Commerce Commission*

A number of cases of statutory construction arose bearing upon the powers of the Interstate Commerce Commission or other statutes grounded on the commerce power. These can be given only the briefest mention. Beaumont, S.L. & W.R. Co. v. United States[24] presents a highly complicated problem affecting a division of joint rates between the southwestern roads and the western trunk-line roads. The order of the Commission as to this division of rates was upheld. Lewis-Simas-Jones Company v. Southern Pacific Company[25] upheld the Commission's jurisdiction to grant relief from a joint through rate established by a domestic and a foreign railroad. In two cases, Alabama v. United States[26] and

[22] Those interested in examining further the conflicting viewpoints in these opinions may consult "United States v. Macintosh; A Symposium," by John H. Wigmore, Kenneth C. Sears, Ernest Freund, and Frederick Green, in 26 *Illinois Law Review*, 375-396 (Dec., 1931).

[23] 283 U.S. 636, 1931.

[24] 282 U.S. 74, 1930.

[25] 283 U.S. 654, 1931.

[26] 283 U.S. 776, 1931.

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Georgia Public Service Commission v. United States,[27] orders of the Interstate Commerce Commission directing the increase of local rates to avoid discrimination against interstate commerce were sustained. In Florida v. United States,[28] however, a similar order was set aside as not being supported by adequate evidence of the forbidden discrimination. In Louisville & N. R. Co. v. United States[29] and Kansas City S. R. Co. v. United States,[29] the Court sustained the Interstate Commerce Commission's order forbidding interstate railroads to transport each other's private cars free of charge, and compelling them to file tariffs covering all such transportation of private cars. This broke up a custom of long standing to which the carriers unsuccessfully urged that the provisions of the Interstate Commerce Act were not intended to apply.

In Federal Trade Commission v. Raladam Company,[30] the Court held that the Commission had no power under the Federal Trade Commission Act to forbid a business method or practice, or type of advertising, as "unfair competition" unless the evidence showed that competition actually existed and that competitors would be injured by the continuance of the practice. It is not sufficient to show merely that the general public is being deceived or injured. The defendant company, therefore, which advertised an "obesity cure" by highly questionable claims in its behalf could not be interfered with because injury to competitors, if it had any, could not be shown.

In McBoyle v. United States,[31] it is held that the Motor Vehicle Theft Act[32] does not apply to the stealing of an airplane. A "vehicle" by definition is something which moves on land. Airplanes were known when the act was passed, and if Congress had intended them to be included it would have made its intention clear.

3. *The Anti-Trust Acts—Patents and Copyrights*

Two of the more important anti-trust cases were Paramount Famous Lasky Corporation v. United States,[33] in which various agreements affecting the motion picture industry were enjoined as unreasonable restraints of interstate commerce, and Standard Oil Company v. United States,[34] in which certain licensing arrangements controlling patent rights were held not to involve unlawful restraints of trade. Interesting problems of patent and copyright law are involved in Carbide Corporation of America v. American Patents Development, etc., Corporation,[35] and in

[27] 283 U.S. 765, 1931.
[28] 282 U.S. 194, 1931.
[29] 282 U.S. 740, 1931, and 282 U.S. 760, 1931.
[30] 283 U.S. 643, 1931.
[31] 283 U.S. 25, 1931.
[32] Act of Oct. 29, 1919, 41 Stat. at L. 324.
[33] 282 U.S. 30, 1930.
[34] 283 U.S. 163, 1931.
[35] 283 U.S. 27, 1931, and same, 283 U.S. 420, 1931.

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Buck v. Jewell-La Salle Realty Company,[36] and Jewell-La Salle Realty Company v. Buck.[37]

4. *National Prohibition*

In United States v. La Franca,[38] the Court so construes the provisions of the Revenue Act of 1924 in relation to the provisions of the Volstead and Willis-Campbell Prohibition Acts as to prevent the collection of penalties for the non-payment of taxes on liquors unlawfully sold from one who has already been convicted under the National Prohibition Act. These penalties, while referred to in the statute as taxes, are in reality penal exactions, and are therefore banned by the section of the Willis-Campbell Act making a prior conviction for an offense under either the revenue act or the prohibition act a bar to a prosecution under the other. On the other hand, it is held in Various Items of Personal Property v. United States[39] that a libel action to effect the forfeiture of property used for the distilling of liquor with intent to defraud the government of the tax imposed by law is a civil action, and accordingly not barred by a previous conviction for conspiracy to violate the law. The forfeiture, therefore, of a brewery, warehouse, and denaturing plant was sustained, as being no part of the punishment for the criminal offense.

5. *Taxation*

It is held in Poe v. Seaborn[39a] that a husband and wife may file separate federal income tax returns, each regarding one-half of the community property as individual income, in states in which the wife has a vested property right in the community property equal to that of her husband. This situation prevails in the state of Washington, and the attempt of the commissioner of internal revenue to compel the husband to make return of the entire amount of the property was, under the Court's ruling, defeated.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. *Due Process of Law*

a. *Due Process of Law in Relation to the Police Power—Freedom of Speech.* One of the most significant cases decided at the 1930 term was Near v. Minnesota *ex rel.* Olson[40] invalidating the famous "Minnesota gag law." The importance of the case lies not only in the substantive pro-

[36] 283 U.S. 191, 1931.
[37] 283 U.S. 202, 1931.
[38] 282 U.S. 568, 1931.
[39] 282 U.S. 577, 1931.
[39a] 282 U.S. 101, 1930.
[40] 283 U.S. 697, 1931.

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tection which it affords to free speech and press, but also in its clarification of the relation between freedom of speech and due process of law.

The Minnesota law provided, in substance, for the abatement as a public nuisance of any "malicious, scandalous, and defamatory newspaper, magazine, or other periodical." Any one engaging in the business of publishing such matter, as individuals, or as members, employees, officers, or directors of any firm, association, or corporation, or any one owning in whole or in part, directly or indirectly, any stock or interest in any corporation or organization so publishing, falls under the provisions of the act. The publication of the objectionable material constitutes a nuisance which may be permanently enjoined. In such actions for abatement, there "shall be available the defense that the truth was published with good motives and for justifiable ends." The court is empowered, as in other cases of contempt, to punish disobedience of an injunction restraining continued publication by a fine of not more than $1,000 or by imprisonment of not more than twelve months. The law was invoked against the publishers of the *Saturday Press* in the city of Minneapolis. The evidence showed that this paper charged, in substance, that a Jewish gangster was in control of gambling, bootlegging, and racketeering in Minneapolis, that municipal and county law enforcement officers were negligent in their duties, that the chief of police was guilty not only of gross neglect of duty but also of illicit and corrupt relations with gangsters, that the county attorney and mayor were willfully refraining from vigorous law enforcement, and many other allegations of similar import. An injunction was issued permanently enjoining Near from "producing, editing, publishing, circulating, etc. . . . any publication whatsoever which is a malicious, scandalous, or defamatory newspaper, as defined by law," and from "further conducting said nuisance under the name and title of said *The Saturday Press* or any other name or title." The supreme court of Minnesota upheld the validity of the injunction, and an appeal was taken to the Supreme Court of the United States, on the ground that the statute, by unduly curbing freedom of the press, deprived the appellant of his liberty without due process of law, in violation of the Fourteenth Amendment.

The opinion of Chief Justice Hughes invalidating the Minnesota law may be summarized as follows: First, "it is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. Second, the Minnesota statute has four attributes which determine its essential purpose and nature. These are as follows: (a) It is not necessary under the statute to prove the falsity of the matter published in order to secure the restraint of its publication. "It is apparent

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that . . . the publication is to be regarded as defamatory if it injures reputation, and that it is scandalous if it circulates charges of reprehensible conduct, whether criminal or otherwise, and the publication is thus deemed to invite public reprobation and to constitute a public scandal." (b) The restraints of the act are not limited to the defamatory matter about private individuals, but are directed also to charges against public officials and official acts. (c) The object of the statute is not punishment but suppression. (d) The effect of the statute is to put the publisher under censorship. "Thus, where a newspaper or periodical has been suppressed because of the circulation of charges against public officers of official misconduct it would seem clear that the renewal of the publication of such charges would constitute a contempt and that the judgment would lay a permanent restraint upon the publisher, to escape which he must satisfy the court as to the character of a new publication." Third, the American and English conception of freedom of speech and press from Blackstone on has been built upon the basis of freedom of publication from previous restraint. A free press means much more than that, but it has never meant less, save in the exceptional cases of war emergency, the restraint of obscenity, and the restraint of actual incitement to violence. The need for and importance of this immunity of the press from previous restraint grows more rather than less. "The administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasizes the primary need of a vigilant and courageous press, especially in great cities. The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any less necessary the immunity of the press from previous restraint in dealing with official misconduct." Fourth, the vital defect of the statute is not repaired by the fact that the truth of published statements may be proved in defense of an action under it. Nor is it sufficient to allege that such restraints as are provided are necessary as means of preventing the circulation of scandal which may result in breaches of the peace or actual crime. The repression set up is more vicious than the evils so struck at. Fifth, the statute is void on its face, by virtue of the general effect of its provisions regardless of the truth or falsity of the published statements out of which this case arose. In other words, the Court is invalidating the statute by reason of its substantive provisions without regard to the way in which it may have been applied in a particular case.

A vigorous dissenting opinion was written by Mr. Justice Butler and concurred in by Justices McReynolds, Sutherland, and Van Devanter. It

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begins with the statement that the decision of the Court "gives to freedom of the press a meaning and a scope not heretofore recognized and construes 'liberty' in the due process clause of the Fourteenth Amendment to put upon the states a federal restriction that is without precedent." The record shows conclusively that the statements published by Near were false and malicious. It is urged that the Court, in considering the case, should not attempt to pass upon the validity of the statute as a whole, but should confine itself to determining whether in its application to the appellant there had been a denial of due process of law. The act is an exercise of the police power of the state, and the Court should follow its well established rule of assuming the existence of a state of affairs which would justify the measure for the preservation of the peace and good order of the state. Sharp issue is taken with the majority position that the act imposes previous restraint upon publication. There is no such "previous restraint" within any proper meaning of the phrase. Attention is called to the fact that the statute imposes no restraint of any kind upon publications which have not been adjudged to constitute nuisances. It is granted that the continued publication of obscene matter may be enjoined, and the dissenting justices see no sound distinction between such restraint and that here provided for. The opinion concludes with the rather feeling observation: "The doctrine that measures such as the one before us are invalid because they operate as previous restraints to infringe freedom of press exposes the peace and good order of every community and the business and private affairs of every individual to the constant and protracted false and malicious assaults of any insolvent publisher who may have purpose and sufficient capacity to contrive and put into effect a scheme or program for oppression, blackmail, or extortion."

It may be worth while to call attention to the fact that the present case represents the climax of an interesting evolution in our constitutional law whereby freedom of speech and press are at last effectively "nationalized," or confided to the protection of the federal courts against both national and state impairment. The steps in that evolution may be traced thus: (1) Prior to the adoption of the Fourteenth Amendment, there was no federal constitutional restraint upon state abridgment of the freedom of speech or press, since under the doctrine of Barron v. Baltimore[41] the First Amendment does not apply to the states. (2) After the Fourteenth Amendment was adopted, the doctrine of Maxwell v. Dow[42] and Twining v. New Jersey[43] made it clear that freedom of speech and press are not included in the list of privileges and immunities of citizens

[41] 7 Peters 243, 1833.
[42] 176 U.S. 581, 1900.
[43] 211 U.S. 78, 1908.

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of the United States which the states are forbidden by the Fourteenth Amendment to abridge. (3) As late as 1922, the Supreme Court, in the case of Prudential Insurance Co. v. Cheek,[44] expressed the view that "neither the Fourteenth Amendment nor any other provision of the Constitution of the United States imposes any restrictions about 'freedom of speech'," although the precise question whether freedom of press and speech could be regarded as part of the "liberty" protected by the due process clause seems not to have commanded the serious attention of the Court. (4) Step by step, the Court shifted its ground until it finally assumed the position that the due process clause of the Fourteenth Amendment includes within the meaning of the term "liberty" freedom of speech and press. In 1907, Mr. Justice Harlan, in a dissenting opinion in Patterson v. Colorado,[45] declared: "I go further and hold that the privileges of free speech and of a free press, belonging to every citizen of the United States, constitute essential parts of every man's liberty, and are protected against violation by that clause of the Fourteenth Amendment forbidding a state to deprive any person of his liberty without due process of law." Essentially the same view is expressed, less vigorously, by Mr. Justice Brandeis in his dissenting opinion in Gilbert v. Minnesota,[46] a case in which the majority alluded to the question but did not pass upon it.

In 1923, Mr. Justice McReynolds, in a dictum in Meyer v. Nebraska,[46a] defined "liberty" protected by the due process clause of the Fourteenth Amendment in terms amply broad to include freedom of speech and press. He said: "Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

In Gitlow v. New York,[47] the Court, speaking through Mr. Justice Sanford, declared: "For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states," although the state statute under attack was held not to work such impairment. In two cases decided in 1927, the Court assumed that undue restrictions upon

[44] 259 U.S. 530, 1922.
[45] 205 U.S. 454, 1907.
[46] 254 U.S. 325, 1920.
[46a] 262 U.S. 390, 1923.
[47] 268 U.S. 652, 1925.

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freedom of speech were deprivations without due process of law where the question raised was the application of statutory provisions to particular situations rather than the validity of the statutes themselves. These cases were Whitney v. California,[48] in which no denial of due process was found, and Fiske v. Kansas,[49] which reached an opposite result. The present case of Near v. Minnesota is, therefore, the first in which a state statute is held, by virtue of its general character, to deprive persons of liberty without due process of law because it unreasonably restricts freedom of speech and press.

A somewhat similar result was reached in Stromberg v. California.[50] Here the appellant had been convicted of violating a California statute making it a felony to display a red flag as "a sign, symbol, or emblem of opposition to organized government or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character." It was admitted by the state supreme court that the prohibition against displaying a red flag as a sign of "opposition to organized government" amounted to so serious an infringement of freedom of speech as to deprive a person of liberty without due process of law under the Fourteenth Amendment. Such "opposition" might be of a most orderly and legitimate character. With this view the Supreme Court agreed, and it set aside the conviction of the appellant. The only point at real issue in the case was whether the conviction rested upon the part of the statute thus agreed to be void, or whether it might not be supported on the ground of violation of the provision forbidding the display of the red flag as a stimulus to anarchy and sedition. Justices McReynolds and Butler dissented on these technical grounds of procedure.

In two cases involving the application of the due process test to state police legislation, the Court reopened questions heretofore settled, on the ground that police regulations once valid may become invalid by reason of the passing of time and change of circumstance. Missouri, P. R. Co. v. Norwood[51] raised the question of the constitutionality of the Arkansas full-crew laws of 1907 and 1913. These acts had been upheld in Chicago, R. I. & P. R. Co. v. Arkansas[52] and in St. Louis, I. M. & S. R. Co. v. Arkansas[53] against allegations that they denied due process of law and burdened interstate commerce. The railroad now asserts that changed conditions and modern improvements in railroad equipment make the laws unnecessary for public safety, and therefore arbitrary and wanting in due process. While recognizing the propriety of raising the question,

[48] 274 U.S. 357, 1927.
[49] 274 U.S. 380, 1927.
[50] 283 U.S. 359, 1931.
[51] 283 U.S. 249, 1931.
[52] 219 U.S. 453, 1911.
[53] 240 U.S. 518, 1916.

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the Court holds that the railroad's allegations are not supported by evidence. It further rejects the plea that recent federal legislation affecting railroads discloses any congressional intention to oust the state from the control of the problem of crew size. In Abie State Bank v. Bryan,[54] the Court plainly implies that conditions have so changed in twenty years that the Nebraska bank guaranty law, held valid in Shallenberger v. First State Bank[55] and Noble State Bank v. Haskell,[56] would now be wanting in due process of law by reason of the confiscatory burdens imposed on the banks subject to its provisions. After the institution of this suit, however, the legislature of Arkansas so modified the law as materially to alleviate its burdens, so that the Court found itself unable to say that the statute is at present confiscatory.

b. *Due Process of Law and Public Utilities.* The case of O'Gorman & Young v. Hartford Fire Insurance Co.[57] upholds the validity of a New Jersey statute which forbids any fire insurance company doing business in the state to pay to any of its insurance agents any commission "in excess of a reasonable amount," or to pay any agent a commission higher than that paid to any other agent in the state. The purpose of this was to provide that fire insurance rates should be reasonable. In a brief opinion, Mr. Justice Brandeis points out that the business of fire insurance is so far affected with a public interest as to permit the public to regulate its rates, that the agents' commissions, being a percentage of the premium, bears a direct relation to the rate charged the insured. The statute is therefore clearly within the field of the states' police power, and "it does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy." There is a sharp dissent by Mr. Justice Van Devanter, concurred in by Justices McReynolds, Sutherland, and Butler. Their point of attack upon the statute is that the regulation does not deal directly with the contract to insure. Because rates of insurance may be controlled by the state, it does not follow that every agreement having any possible relation to the rates may also be controlled. The statute permits state interference with the right of the company to control its internal affairs, and is accordingly "arbitrary, unreasonable, and beyond the power of the legislature."

A Florida statute of 1929 required all persons or corporations operating motor trucks for hire between fixed termini or over regular routes to secure from the state railroad commission certificates of public convenience and necessity, to file schedules of rates to be charged, to pay certain

[54] 282 U.S. 765, 1931.
[55] 219 U.S. 114, 1911.
[56] 219 U.S. 104, 1911.
[57] 282 U.S. 251, 1931.

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taxes, and to file bond or provide insurance for the protection of persons and property. The act exempted from its provisions "transportation companies engaged exclusively in the transporting of agricultural, horticultural, dairy, or other farm products, and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point en route to the primary market," or "motor vehicles used exclusively in transporting or delivering dairy products. . . ." This act was held void in Smith v. Cahoon,[58] in which a prosecution had been brought for violation of the statute against the appellant, who operated motor trucks under an exclusive contract with the Atlantic & Pacific Tea Company. In the first place, it is pointed out that the act does not in its terms make any distinction between common carriers and private carriers; that it imposes burdens and requirements upon both which can, in accordance with due process of law, be imposed only on common carriers; and that there is no way of separating the provisions of the act which are void on this ground from those which are not. The appellant could not know which sections could validly be enforced against him, and the act is therefore void for want of certainty necessary to due process in any criminal statute. The act, furthermore, is void on the ground of denial of equal protection of the laws by reason of the exemption stated above in behalf of those transporting farm products, fish, etc. The requirement of bond or insurance is in behalf of public safety, and there is not "the slightest justification for making a distinction between those who carry for hire farm products, or milk or butter, or fish, or oysters, and those who carry for hire bread, or sugar, or tea or coffee, or groceries in general, or other useful commodities."

Smith v. Illinois Bell Telephone Co.[59] raised questions as to the validity of telephone rates established in the city of Chicago by the Illinois commerce commission. The establishing of a satisfactory rate base was complicated by the necessity of distinguishing between the company's property used for local as contrasted with interstate business, a distinction which the state commission had ignored. Other factors involved the relations of the telephone company to other corporations with which it is affiliated as part of a large system. The case was remanded back to the district court for further findings of fact in accordance with the directions embodied in the opinion in the case.

c. *Due Process of Law and Taxation.* Several problems of state taxation in relation to due process of law may be mentioned briefly. Beidler v. South Carolina Tax Commission[60] applied the general doctrine of

[58] 283 U.S. 553, 1931.
[59] 282 U.S. 133, 1930.
[60] 282 U.S. 1, 1930.

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Farmers' Loan & Trust Co. v. Minnesota,[61] decided[62] at the last term, to the attempt by South Carolina to tax the transfer of certain debts owed by a South Carolina corporation to an Illinois testator who leaves the debts as part of his personal property. The debts took the form of advances made to the company, as well as claims and unpaid dividends. The Court held that the debts had no situs in South Carolina, and could not, conformably to due process of law, be taxed by that state. Memphis & Charleston R. Co. v. Pace[63] upheld the levy upon the property of the railroad of a tax for road improvements. The tax was imposed, without apportionment according to benefits, upon all real and personal property. There was a finding of general benefit accruing to the railroad, which defeated the contention that the tax was wanting in due process, which does not require the proof of special benefit. In the case of Graniteville Manufacturing Co. v. Query,[64] it is held that a state may validly impose a stamp tax on promissory notes executed within the state, though payable to banks at their places of business outside of the state.

2. *Equal Protection of the Laws*

a. *Taxation—The Chain Store Tax Case.* The announcement of the Court's decision upon the validity of the Indiana chain-store tax was awaited with nation-wide concern, not only because of the financial interest involved, but also because of the consumers' interest in the rapidly growing chain-store organization. By a five-to-four decision, the Court upheld the validity of the discriminatory tax.[64a] The opinion was written by Mr. Justice Roberts. The Indiana statute forbids the operation of any store in the state without a state license. Those operating within the state one or more stores "under the same general management, supervision, or ownership" are required to pay license fees as follows: upon one store, three dollars; upon two to five stores, ten dollars for each additional store; upon six to ten stores, fifteen dollars for each additional store; upon each store in excess of ten, but not to exceed twenty, a fee of twenty dollars for each additional store; upon each store in excess of twenty, a fee of twenty-five dollars for each additional store. The appellant owned and operated two hundred and twenty-five chain groceries in the city of Indianapolis, thereby becoming liable to the payment of annual license fees amounting to $5,443. He sought an injunction restraining the enforcement of the act against him, on the ground that it arbitrarily discriminated against him and thereby denied him the equal protection of the laws in violation of the Fourteenth Amendment. No

[61] 280 U.S. 204, 1930.
[62] For comment, see this REVIEW, vol. 25, p. 90.
[63] 282 U.S. 241, 1931.
[64] 283 U.S. 376, 1931.
[64a] State Board of Tax Commissioners v. Jackson, 283 U.S. 527, 1931.

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attempt was made to defend that statute as a police regulation; it was presented to the Court as a revenue measure levying an occupation tax. The issue was in point of law very simple: namely, is there sufficient showing of fact to justify the classification in the statute upon the basis of any real differences which the law may take notice of between chain stores and those independently owned and operated? There was, of course, much dispute as to these matters. Jackson produced evidence to show that only twelve per cent of the retail stores of the country are chain stores, in contrast to sixty-three per cent independent stores and sixteen per cent department stores. Several department stores in Indianapolis doing a much larger business than his paid a license fee of only three dollars. Chain-store firms larger than his, but with only one store in Indiana, also paid the minimum license. Large numbers of independent stores are members of "associations" or "voluntary chains" under which coöperative buying is carried on, and each such store pays only the three-dollar annual fee. He argued that the mere addition of another unit to an existing chain only increased the total sales arithmetically, in other words, that the volume of business of the other stores is not increased by adding a new one.

The state commission, on the other hand, produced elaborate evidence to show substantial differences between chain stores and independent stores. Among these were quantity buying, buying for cash with resulting discounts, skill in buying, warehousing and distributing on a more efficient basis, abundant capital, a pricing and sales policy more sensitively adjusted to the consumers' needs, better advertising, superior management, standardization of store management, etc. Without any elaborate discussion of this evidence, the Court concluded that it disclosed sufficient differences between chain stores and independent stores to justify the classification of the statute. The Court said: "It is not the function of this court in cases like the present to consider the propriety or justness of the tax, to seek for the motives or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the legislature if there are substantial differences between the occupations separately classified. Such differences need not be great."

A dissenting opinion was written by Mr. Justice Sutherland and concurred in by Justices Van Devanter, McReynolds, and Butler. The purport of the dissent is that the evidence tends to show that the differences and advantages alleged to distinguish the chain stores from their competitors are not due to chain-store organization, since they are shown to be shared by other varieties of business associations and combinations, and that therefore the mere fact of multiple-store ownership and manage-

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ment does not provide a relevant basis of classification. The act therefore works a denial of the equal protection of the laws.

b. Taxation—Miscellaneous. Problems of classification in taxation were involved in Hans Rees' Sons v. North Carolina *ex rel.* Maxwell,[65] which held void a state statute taxing a disproportionately large share of the total business of a corporation doing business in several states; in Columbus & Greenville R. Co. v. Miller,[66] which sustained a state tax on railroads within a levee district on a mileage basis, but imposing a much reduced rate on railroads having less than twenty-five miles of tracks; in Klein v. Board of Tax Supervisors,[67] upholding a state law exempting the stockholders of corporations from the taxation on their stock, provided seventy-five per cent of the corporate property is taxable in the state, and as long as such corporations pay taxes on all such exempted property. In Storaasli v. Minnesota,[68] it is held that there is no denial of equal protection of the laws in imposing upon the appellant, who resides in Fort Snelling Military Reservation (a ceded district subject to exclusive federal jurisdiction) a higher motor vehicle tax for the privilege of using the state highways of Minnesota than is paid by other non-residents using such highways.[69]

II. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

The Supreme Court has held, in a case arising under the federal Revenue Act of 1924,[70] that a tax imposed on a gift fully consummated before the statute came into effect was arbitrary and repugnant to the Fifth Amendment. This doctrine is applied, in the case of Coolidge v. Long,[71] to an inheritance tax assessed under the provisions of a Massachusetts statute. In 1907, a trust had been created by one Coolidge and his wife whereby a large amount of property was transferred to trustees, who were given extensive powers of management. The income from the trust was to be paid to the Coolidges during their joint lives, and thereafter the principal was to be divided equally among their sons. The creators of the trust retained no power of revocation or modification of the terms of the trust. One of the Coolidges died in 1921, and the other in 1925, and the state thereupon attempted to collect its tax under the state act of 1921 upon the transfer of the principal of the trust to the surviving sons. The Supreme Court, speaking through Mr. Justice Butler, held that the gift by which this transfer of property was effected was

[65] 283 U.S. 123, 1931.
[66] 283 U.S. 96, 1931.
[67] 282 U.S. 19, 1930.
[68] 283 U.S. 57, 1931.
[69] Other cases involving the equal protection clause are Bain Peanut Company v. Pinson, 282 U.S. 499, 1931; and Wampler v. Lecompte, 282 U.S. 172, 1930.
[70] Blodgett v. Holden, 275 U.S. 142, 1928.
[71] 282 U.S. 582, 1931.

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completed at the time of the creation of the trust in 1907, that no property interests vest in the heirs by reason of the death of the creators of the trust, since that interest had long since vested under the terms of the instrument itself. The tax is therefore a retroactive tax upon a completed gift, and as such is wanting in due process of law. Furthermore, the Court holds that the trust deed was a contract validly completed, and that the state was without power by subsequent legislation, whether under the guise of its taxing power or otherwise, to impair the obligation of that contract. A long dissenting opinion filed by Mr. Justice Roberts was concurred in by Justices Holmes, Brandeis, and Stone. The dissenting judges maintain that there is a valuable interest passing to the beneficiaries of the trust at the time of and by reason of the death of the creators of that trust, and that the privilege of enjoying this interest is a proper subject for state taxation.

III. STATE AND FEDERAL RELATIONS

1. *State Police Power and Interstate Commerce*

A provision of the Virginia constitution requires a foreign public service corporation to become incorporated in Virginia before it can obtain authority to carry on intrastate business in the state. In Railway Express Agency v. Virginia,[72] the Court sustained an order of the state commission refusing the appellant the right to do local business in Virginia on the ground that it had not complied with this requirement. It was urged on behalf of the company that it was being deprived of its rights under the Fourteenth Amendment, as well as being subjected to a burden upon its interstate business by the operation of this requirement. The Court finds no merit in either contention. There is no evidence that the refusal of the state to allow intrastate business to be carried on would, under the circumstances, burden interstate commerce; nor can the fact that, by incorporating in Virginia, the company loses its right to remove suits to federal courts on grounds of diversity of citizenship deprive it of due process of law. If it becomes a Virginia corporation, it does not, under the constitution, have such right of removal.

Furst v. Brewster[73] invalidated an Arkansas statute requiring a foreign corporation doing business in the state to comply with certain requirements in order to make any enforceable contract in the state. The requirements related to the filing of a copy of the corporate charter and a statement of assets and liabilities, the designation of officers and agents in Arkansas for the service of process against the company. The Court

[72] 282 U.S. 440, 1931. [73] 282 U.S. 493, 1931.

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found that the requirements established by the state law operated as a serious burden upon interstate commerce and were accordingly void.

In Atchison T. & S. F. R. Co. v. Railway Commission,[74] the Court sustained the validity of an order of the California railroad commission requiring of the appellant and associated roads the construction of a union passenger station in the city of Los Angeles in accordance with a plan outlined by the commission. After careful scrutiny of the facts, the Court failed to find that the state had, by the issuance of this order, exercised any power in a field exclusively reserved to the federal government, or had burdened interstate commerce, or by virtue of the expense involved in complying with the order had deprived the roads of property without due process of law.

2. *State Taxation and Interstate Commerce*

Two cases involving the effect of state taxation upon interstate commerce were decided during the last term of the Court. In East Ohio Gas Co. v. Tax Commission,[75] a state excise tax in the nature of an occupation tax was imposed on corporations selling natural gas to customers in Ohio. The tax was based on the gross receipts from the sales within the state. Seventy-five per cent of the company's supply of gas was brought into Ohio from West Virginia and Pennsylvania. The gas thus secured from outside the state was pumped through pressure mains to certain reducing stations in Ohio. At these reducing stations, it was distributed throughout the network of pipe lines traversing the state from which municipalities and individual customers were supplied. The point at issue in the case was whether the gas sold to the customers was immune from state tax on the ground that it had been brought into the state through the channels of interstate commerce. The Court held the tax to be properly imposed. It pointed out that the gas ceases to be a commodity moving in interstate commerce when it reaches the distributing stations in Ohio. Speaking of the change which took place at these stations, the Court said: "The treatment and diversion of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale, and sold at retail." Consequently, the sale of the gas under these conditions to customers in Ohio is not interstate commerce, but purely local business, exclusively within the local jurisdiction of the state. The doctrine here announced is admitted by the Court to be inconsistent with part of its previous opinion in the case of Pennsylvania Gas Co. v. Public Service Commission,[76] in which it was held with respect to gas piped into

[74] 283 U.S. 380, 1931.
[75] 283 U.S. 465, 1931.
[76] 253 U.S. 23, 1920.

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New York from Pennsylvania that the entire movement of the gas was interstate commerce, but that in the absence of contrary regulations by Congress the state had power to prescribe the rates to be charged to local customers. The Court here observes: "The opinion in that case must be disapproved to the extent that it is in conflict with our decision here."

A Tennessee statute of 1927 imposed upon concerns operating interstate motor busses over the highways of the state a privilege tax, graduated according to the carrying capacity of the busses. In Interstate Transit Incorporated v. Lindsey,[77] this tax was held void as a burden upon interstate commerce. While conceding that a state may legitimately impose upon those operating motor vehicles in interstate commerce a fee which represents a fair contribution to the state for the privilege of using the highways, the Court emphasizes that such charges cannot be pushed to the point where they cease to represent such a fair equivalent for a privilege enjoyed. The tax in this case was based, not upon the size or weight of the busses or the mileage travelled, but upon the number of passengers carried. The tax rests, therefore, upon the earning capacity of the interstate enterprise rather than upon the value of the privilege which it receives from the state in the use of public highways. The Court is also impressed by the fact that the proceeds from the tax are paid into the general funds of the state instead of being allocated to road construction or road repairing purposes.

3. *State Taxation of Federal Instrumentalities*

A complicated and difficult problem affecting the relation between the states' taxing power and federal instrumentalities was presented to the Court in Educational Films Corporation v. Ward.[78] The New York tax law lays an annual tax on domestic corporations of certain classes "for the privilege of exercising their franchise in this state in a corporate or organized capacity." The tax is at the rate of 4½ per cent of that portion of the corporation's entire income which is allocated to the business carried on within the state. A major portion of the appellant's income is in the form of royalties from motion picture films copyrighted under federal law. Relying upon Long v. Rockwood,[79] it is argued that the imposition of the state tax upon the income from these copyrights constitutes a tax upon a federal instrumentality which the state is powerless to lay. In an opinion written by Mr. Justice Stone, the Court rejects this view and builds up an argument supporting the tax upon a highly technical interpretation of its legal character. The tax, it is said, is not a tax upon the entire income of the corporation. It is rather a tax upon

[77] 282 U.S. 379, 1931.
[78] 283 U.S. 183, 1931.
[79] 277 U.S. 142, 1928.

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the corporation's privilege of enjoying its corporate franchise, measured by its net income. Viewed as such, it falls within the protection of the acknowledged right of a state to impose a franchise tax upon corporations.

Those interested in fine distinctions may scrutinize with curiosity Mr. Justice Stone's effort to distinguish the present case from Macallen & Co. v. Massachusetts,[80] in which the Court held that a Massachusetts tax on corporations, measured by income, was invalid when the income included interest upon federal bonds and securities. Mr. Justice Sutherland, who wrote the opinion in the Macallen case, dissented, and Justices Van Devanter and Butler concurred with him.

A California statute imposed a tax upon common carriers of passengers by motor vehicles between fixed points in the state, based upon gross receipts. In Alward v. Johnson,[81] objection is made to the inclusion as part of such gross receipts of money received from the United States government under contract for carrying mail. The Court rejects the contention that there is any valid claim to immunity from taxation. The tax was not laid upon the contract for mail service; it was not laid directly upon any federal instrumentality; and it can be said to effect the operations of the federal government only remotely, if at all.

In Susquehanna Power Co. v. State Tax Commission,[82] an attempt is made by the appellant to escape state taxation upon lands acquired by a licensee of the Federal Power Commission for the construction of a dam across a navigable river, and for the operation of a power plant under such license. The plea was the usual one that the state tax fell upon a federal instrumentality. The Court rejects this contention, on the ground that the tax is imposed, not on the license from the federal government, but upon the private property of the company used in its own business. Mr. Justice Stone, speaking for the Court, says: "The present case is not only controlled by the earlier decisions of this Court, but it would be difficult to suppose any case in which the adverse effect of the tax upon a governmental purpose would be more remote or attenuated, or in which the assertion made would more seriously impoverish the sovereign power of the state to tax, than in this one."

[80] 279 U.S. 620, 1929.
[81] 282 U.S. 509, 1931.
[82] 283 U.S. 291, 1931.

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Governors' Messages to Special Legislative Sessions in 1931. Since the publication of the article on governors' messages in 1931, which appeared in the May number of the REVIEW, a number of states have held extraordinary sessions. One, Georgia, opened its regular biennial session on June 29. The present note presents, in so far as information is available, the purpose for which each of the special sessions was called, the recommendations made by the governors, and the resulting legislation.[1]

Arizona. A special session of the legislature called by Governor George W. P. Hunt to consider unemployment, public works, and taxation convened on December 28 and adjourned on January 11. The results of this session will be discussed in a later note.

Arkansas. Governor Harvey Parnell convened the General Assembly in extraordinary session on October 7, 1931. Two projects were proposed: (1) to enact legislation for the reduction of cotton planting and conserving the fertility of the soil; and (2) to amend an act, passed at the regular session of 1931, concerning an audit of the state highway department to expand and reinforce the authority of the highway audit commission in the securing of needed evidence. Both of these acts were passed, the second in compromise form, and the Assembly adjourned on October 21.

Florida. Governor Doyle E. Carlton has convened two special sessions of the state legislature since the 1931 regular session. The first met on June 7 and adjourned on June 26; the second met on July 6 and adjourned on July 25. The subject considered by both sessions is reported to have been that of tax reform. No information could be secured as to the outcome of the meetings.

Idaho. Fast on the heels of the regular session of the legislature in 1931, Governor C. Ben Ross called a special session on March 6 to consider taxation. A bill considered, but not passed, by the regular session was recommended for adoption. A tax upon electrical energy was also suggested. The session adjourned on March 13 after passing two tax measures—one providing for an income tax and another for a kilowatt tax.

Illinois. Governor Louis L. Emmerson convened the legislature in a

[1] Information on the various states discussed has been furnished by the following persons, whose coöperation is gratefully acknowledged: all special sessions, the American Legislators' Association, Henry W. Toll, director; Arkansas, Governor Harvey Parnell; Idaho, Governor C. Ben Ross; Illinois, C. DeWitt Billman; Massachusetts, John B. Redmond; Mississippi, David W. Knepper; New Jersey, Sedley H. Phinney; New York, the New York State Library; Pennsylvania, John W. Fertig; Rhode Island, Governor Norman S. Case; South Carolina, Zack Townsend; Tennessee, D. F. Fleming; Texas, Frank M. Stewart; Wisconsin, Edwin E. Witte.

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first special session on November 5, 1931. On January 19, he issued a proclamation convening a second session, although the first was still in progress. On February 1, a third session was convened, and there were three special meetings running concurrently until February 18, when a recess was taken until April 19. All three sessions will probably convene at that time to complete their business. Discussion of the purposes of the Illinois sessions, as well as of their results, will be deferred until information on the 1932 regular sessions and special sessions is available.

Louisiana. Governor Huey P. Long convened the legislature in special session on August 25 to consider the problem of limiting cotton acreage. Adjournment occurred on September 1, but efforts to ascertain the results of the session have proved unavailing.

Massachusetts. Governor John B. Ely convened the Massachusetts General Court in extra session on September 28, 1931, to consider certain changes in the compulsory automobile liability insurance law. Defects which had developed through experience in the administration of the law were explained by the governor to the Court. He requested five specific amendments: (1) to permit a system of demerit rating; (2) to authorize a deductible policy; (3) to eliminate recovery by a guest; (4) to require a claimant to give notice of the time and place of an injury within a limited time after the accident; and (5) to strengthen the law requiring the insured to give notice to the company in the event of an accident. The state librarian reports that no legislation was passed on the governor's recommendations. The General Court adjourned on November 12.

Mississippi. After a long struggle to secure a pledge from his legislators not to impeach him if called into special session, Governor Theodore G. Bilbo finally convened the legislature on September 29. There were two principal tasks: (1) the enactment of a cotton acreage limitation law, and (2) refinancing the state deficit. The governor's message dealt with these and other matters, principally his legislative hobbies. These included the repeal of the "nuisance" taxes, issuance of $60,000,000 in highway bonds, and the reorganization of the governing boards of the state institutions of higher education. A supplementary message of October 12 stressed additional topics, including: (1) reduction of all state salaries, (2) creation of a state director of employment, (3) repeal of the road overseer law, (4) provision of a period for redemption of property taken under foreclosure of mortgage, (5) cut in expense of redemption of property sold for taxes, (6) permission to counties to issue refunding bonds. Aside from minor local and private bills, the legislature enacted five laws: (1) the cotton acreage reduction plan, (2) sale of $6,000,000 in short-term notes to care for the state deficit and pass it on to the next administration, (3) issuance of $5,000,000 in bonds to retire bank depositors' guaranty

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certificates, (4) sale of a $5,000,000 road bond issue to match federal aid, the proceeds of a one-half cent per gallon increase in the gasoline tax being pledged to retire the bonds, (5) sale of $1,000,000 in bonds to set up an agricultural credit corporation. The work of the session has so far, however, actually been fruitless. The required number of states did not concur in the cotton acreage limitation plan, and none of the bonds or notes have been sold, since there was no market for them.

Nebraska. Due to the failure of the regular session to pass an appropriation act, Governor Charles W. Bryan convened a special session on June 9 for that purpose. The session adjourned on June 20 after passing the necessary appropriations, although not in the identical form recommended in the governor's budget.

New Jersey. The state legislature has met in five special sessions on call of Governor Morgan F. Larson since the regular session of 1931. These several meetings were as follows: (1) June 29 (one day), (2) October 5-9, (3) October 26 (one day), (4) December 14 (one day), and (5) December 30 (one day). In New Jersey, the calls of the governor for special sessions of the legislature are always general in character, and the legislature is not limited in the subjects it may consider. The fundamental problem of all the sessions was unemployment relief. The first session passed eleven bills, dealing with unemployment, situations demanding curative action, and minor amendments to the code. One new commission, to operate the Philadelphia-Camden bridge, was created. The second session passed nine bills, all dealing with unemployment, and a concurrent resolution memorializing Congress to amend the Volstead Act. The third session passed four bills, three affecting unemployment relief and one providing for special elections to fill vacancies in Congress. The fourth session passed fifteen bills. These dealt with: (1) unemployment, (2) congressional districting, (3) bidding on public contracts, and (4) organization and operation of banks and trust companies. The fifth session passed eight bills. These were for (1) appropriations for unemployment relief, (2) expanding the powers of the banking and insurance commissioner, (3) rescinding certain appropriations, and (4) authorizing the appointment of a deputy state tax commissioner.

New York. An extraordinary session of the New York legislature, called by Governor Franklin D. Roosevelt to meet on August 25, was ostensibly for the purpose of passing a law to grant immunity to witnesses called before the Seabury committee which is investigating the local government of New York City. The legislature had attempted to confer such authority upon this committee by resolution, but the Court of Appeals held that such action could be taken only by law. The law proposed for this purpose was passed at once, and was approved by the governor on August

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28. On August 27, however, the governor called the attention of the legislature to the need for investigation of other local governments in the state. A bill for this purpose was introduced, but was not passed. On August 28, the governor presented a comprehensive program for the relief of unemployment. This called for: (1) "the creation of a temporary state agency to carry on the expenditure this winter of state moneys on public state work for the employment of residents of the state;" (2) authorizing such agency to apportion state moneys among the counties and cities of the state, to be disbursed by them for employment on local work useful to the public, and for giving necessary food, clothing, shelter, and warmth to residents of the state where useful public work could not be found for them; (3) the appropriation of money out of current revenues to be immediately available for the relief of distress and amelioration of unemployment, and the laying of a tax on personal incomes to provide the necessary moneys; (4) authorizing cities and counties in the state for the period of one year to borrow money for a term not exceeding three years, to be used by them for the employment of local residents on local public works; (5) legislation providing for a five-day week in all future contracts for labor on state and municipal public works other than supervisory labor; and (6) providing state money to pay soldiers' bonuses due to World War veterans under the provisions of Chapter 19 of the law of 1924, "but which have not yet been paid because of delay in filing applications therefor." All but the fourth point in this program was enacted into law.

On August 31, two additional subjects were called to the attention of the legislature: (1) an appropriation to the state department of health for its campaign against infantile paralysis, and (2) amendment of laws providing for the construction of bridges at Troy and Rensselaer to increase the portion of the cost to be paid by the state. Both of these proposals were enacted into law. On September 1, the governor suggested the strengthening of the laws relating to purchase and possession of certain types of weapons, particularly revolvers and machine guns. A law embodying this recommendation was passed and approved. On September 16, the governor called attention to the possibility of alleviating unemployment in certain cities and counties by passing special acts to authorize the issuance of bonds for the construction of certain needed improvements without a vote of the people. But the legislature turned a deaf ear. On September 18, the governor called the attention of the legislature to an inadvertent defect in the procedure in the sale of certain state bonds and suggested a curative act. This was duly passed and signed, being a good example of the type of action that must be taken promptly if the public business is not to suffer, yet can rarely be taken unless the legislature happens to be in session at the time. The governor's last recommendations were transmitted on September 19. One requested the passage of an act

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to enable John R. Voorhis, chairman of the board of elections of New York City, to be retired on full salary. This was also done. Mr. Voorhis, who was past 102 years of age, died within a few months after this retirement became effective. The final message dealt with a bill for the expenses of the session, which was promptly passed; and the legislature adjourned on the same day.

Pennsylvania. Governor Gifford Pinchot convened the General Assembly in special session on November 10, 1931, to deal with a number of matters relating to unemployment relief. Of eighteen proposals, six were approved and twelve disapproved. Those which were successful included: (1) amending the act for the construction of Pymatuning Dam to permit the use of part of the funds for work relief, (2) authorizing the postponement of delinquent tax sales, (3) making an appropriation to state surgical and medical hospitals for charity cases, (4) appropriation to the veterans' commission, (5) advancement of money to school districts, and (6) appropriation of $10,000,000 to aid poor districts. The unsuccessful proposals included: (1) creation of a state commission on unemployment relief, consisting of five persons, to solicit contributions for relief purposes, such contributions to be repaid from the proceeds of a "prosperity bond" issue; (2) proposal of a constitutional amendment to authorize the bond issue; (3) amendment of the 1931 appropriation act to establish an emergency fund to be expended upon order of the governor for unemployment relief; (4) a tax upon cigarettes and billboards to provide money for the governor's emergency fund; (5) amendments to the 1931 appropriation act to provide departments with additional funds for giving work relief; (6) proposal of a constitutional amendment permitting emergency loans to be floated by the state (not exceeding $20,000,000) for relief, after approval by one legislature (two are now required) and a vote of the people; (7) authorizing subdivisions to levy taxes and make appropriations for food, shelter, clothing, fuel, and hospitalization for those in need through unemployment; (8) authorizing subdivisions, including school districts, to borrow on uncollected delinquent taxes; (9) an emergency increase of two cents in the gasoline tax for two years; (10) permitting the state highway department to take over for construction or resurfacing any street or highway in the state in districts where distress was great; (11) conferring additional authority to transfer money from the general fund to the motor license fund in anticipation of revenue, during the existing emergency; and (12) granting the governor authority to appoint commissioners, to act with similar commissioners from other states, for the purpose of negotiating an interstate compact looking toward the rehabilitation of the bituminous coal industry. The session adjourned on December 30.

Rhode Island. The General Assembly of the "State of Rhode Island

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and Providence Plantations'' was convened in special session by Governor Norman S. Case on November 24, 1931. The governor presented a short message dealing with the unemployment situation and recommending the passage of an act to create an unemployment relief commission; to authorize municipal subdivisions, under the supervision of this commission, to issue notes to raise money for relief purposes; and to appropriate a surplus in the state treasury for the purpose of purchasing such notes. The Assembly remained in session only one day, passing the act through both houses by a unanimous vote. Governor Case reports: ''Both houses of the legislature unanimously passed this act, the minority party (Democratic) attacking the act quite strenuously in the House, but not offering any substitute or making any constructive suggestions. However, when the vote came they voted for the passage of the act.''

South Carolina. Governor Ibra C. Blackwood convened the legislature in special session on September 14 to consider the limitation of cotton acreage. The cotton bill was passed, as were also a bill authorizing the attorney-general to investigate the price of cotton-seed in 1930 and three special acts pertaining to local government. The legislature adjourned on September 24.

Tennessee. Two extraordinary sessions of the General Assembly were convened by Governor Henry H. Horton during 1931. The first met on November 16 and adjourned on November 26; the second convened on November 30 and adjourned on December 20. Both were called to deal with fiscal problems. The failure of the first session to deal adequately with the balancing of the state budget led to the call of the second, which completed the task and adjourned. The governor's call for the first session enumerated four items: (1) grant of authority to the funding board (an *ex officio* agency) to borrow money ($10,000,000) to meet appropriations and to refund maturing obligations, (2) authorization of the funding board to sell $5,000,000 in interest-bearing notes to retire outstanding notes issued in 1929, (3) authorization of a similar issue of $9,000,000 in notes to refund 1927 obligations, and (4) validation of county tax levies for 1931 and authorization of levies for 1932. The picture suggested by these requests was so alarming that a special committee consisting of the members of the finance committees of the two houses was appointed to suggest a remedy for the situation.

This interim committee reported to the second session, recommending a comprehensive series of revenue measures. The call of the governor for this session enumerated thirty-one items, including all of the recommendations of the interim committee, twenty-one in number, and ten others. These subjects all related to the enactment or amendment of revenue laws, except (1) enlargment of the territory for the exercise of

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the power of eminent domain by the commission which is acquiring land for the Great Smoky Mountain Park, (2) correction of the code with reference to terms of court, and (3) enabling legislation for fiscal relief of local governments.

The enactments finally made balanced the state budget by (1) reducing state appropriations by $3,000,000, (2) transferring $1,200,000 from highway funds to the general fund, (3) allocating to the general fund the mileage tax of $300,000 from interstate busses and trucks, (4) levying a two-dollar additional automobile registration fee for the general fund, to produce $700,000, (5) diverting interest on bridge funds to the general fund ($510,000), (6) amending revenue laws, to produce $500,000 more, (7) amending tobacco tax law, to add $800,000, (8) levying an eight cent property tax for schools, to yield $1,400,000, (9) adding one cent to the gasoline tax, to raise $4,000,000. In addition, an income tax law was passed, which, if held constitutional, will produce $3,000,000; also $500,000 in other revenue measures. One hundred thirteen local bills were also enacted affecting mainly local finances. An automobile drivers' license bill and a severance tax were defeated. Several measures were passed to put the handling of state finances completely into the hands of the elected treasurer and comptroller. The methods of collecting taxes were strengthened and centralized.

Texas. The Texas legislature has been convened in two called sessions (July 14 to August 12 and September 8 to October 3) since the adjournment of the regular session in 1931. In his call for the first session, Governor Ross Sterling declared the object to be the passage of laws for the conservation of natural resources. By this, oil and gas were particularly meant, as was brought out by his messages to the legislature. These messages, however, extended the scope of the call to thirty-one subjects, which ran the gamut of legislative activity. The governor's oil and gas law was enacted, although in compromise form. Of the remaining thirty subjects, thirteen failed to produce any legislation, while seventeen were fruitful. The successful proposals included (1) an appropriation for the enforcement of anti-trust laws, (2) an act to authorize a suit against the state, by the companies which have constructed toll bridges across the Red River, to determine the validity of certain contracts with the highway department, (3) free tuition in high schools, (4) a new district court for Travis county, (5) a new court for Gregg county, (6) allowing navigation districts to expend funds for work done outside their boundaries, (7) regulation of bids for depositories of municipal funds, (8) appropriation for the child welfare division created by the regular session, (9) regulations concerning school district treasurers, (10) election and duties of rural school supervisors, (11) creation of the office of criminal district

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attorney in certain counties, (12) increase in personnel of Texas centennial committee from nine to twenty-one, (13) validation of the incorporation of certain cities and towns, (14) change in term of judges in the thirty-second judicial district, (15) establishing a board of optometry examiners, (16) amendment to the bond and warrant law of the regular session, and (17) validating certain bonds attempted to be issued under the bond and warrant law. The proposals which failed included: (1) the creation of a separate conservation commission, (2) change in the production tax on oil from two per cent to two cents a barrel, (3) amending the law relating to county depositories, (4) amending the law relating to appeal bonds, (5) amending the new cigarette tax law, (6) congressional redistricting, (7) authorizing the assignment of tax liens and certificates, (8) amending the law relating to licensing of life insurance agents, (9) allowing interest on unpaid state warrants, (10) requiring candidates in primary elections to run for certain designated places, (11) regulation of salaries of county commissioners, (12) amending the law relating to consolidated school districts, and (13) waver of the right of the state to enter upon lands used by the United States for navigation purposes.

The second called session was known as the "cotton session," since the governor's chief concern, as stated in the call, was the enactment of a law to limit cotton acreage. But before this session adjourned, twenty-seven additional subjects had been suggested by the governor for legislative action. Of the twenty-eight subjects proposed, seventeen resulted in legislation, while the remaining eleven did not. Those which were successful included: (1) limitation of cotton acreage, (2) fixing the tax rate at a lower point than the constitutional limit, (3) release of all interest and penalties on delinquent taxes if paid by January 31, 1932, (4) amending compensation of road commissioners, (5) permitting one county to buy in property of its bankrupt debtors, (6) prohibiting solicitation by optometrists, (7) regulation of fees in delinquent tax suits, (8) leasing of state lands in river beds for oil and gas development, (9) tax on loan brokers, (10) tax on cigarette dealers, (11) oil and gas royalty audit of permanent school funds, (12) investment of highway funds in state warrants, (13) regulation of quail season in Atascosa county, (14) canalization of the Trinity River, (15) appropriation for salaries of new district judges and attorneys, (16) appropriation for relief of a school district which had suffered from an earthquake, and (17) changes in the terms of certain district courts. The unsuccessful proposals included: (1) congressional redistricting, which was resubmitted for consideration, (2) permission of coöperative marketing of petroleum, (3) regulation of slot machines, (4) provision for the disposition of certain fees, (5) further

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amendment of the bond and warrant law, (6) disqualification of judges, (7) reduction of salaries of state employees, (8) abolition of the office of auditor of the prison system, (9) of fees of district and county attorneys, (10) of fees of offices in examining court, and (11) allowing the state prison board to bid on state printing contracts.

Wisconsin. On November 16, Governor Philip F. LaFollette issued a proclamation calling the legislature into extraordinary session on November 24 to consider a program which included seventeen items. In his message to the legislature on the first day of the session, these specifications were explained in a masterful and statesmanlike fashion. Stress was laid upon two major planks—unemployment relief and banking reform. On January 19, the call was broadened to include two new subjects: (1) empowering the executive council to reduce appropriations for any department or service up to twenty per cent if it appeared necessary for the state to reduce its expenditures in order to prevent additional tax burdens upon general property, and (2) authorizing local subdivisions by action of their governing bodies to extend the time for payment of property taxes.

Mr. Edwin E. Witte, chief of the legislative reference department of the Wisconsin Free Library Commission, reports that "there has been legislation in this special session on all subjects dealt with in the call, but the relief bill which has been passed does not correspond exactly with the governor's recommendations, and the legislature did not follow the recommendation made for restrictions on chain banking, for the establishment of clearing-house associations, or on stabilization of industry through reduction in hours of labor. . . . The appropriation for relief is approximately $6,500,000, instead of something like fifteen to seventeen million dollars recommended in the message. The relief bill passed has no tax-remission feature, and leaves the unemployment relief commission out of the picture. The funds, however, are raised by a surtax upon incomes and a chain store license tax which was recommended by the governor." "Chapter 29 (of the laws of the special session) was passed in response to the several items in the governor's call relating to emergency relief and the raising of revenues therefor. It does not in all respects, however, carry out the governor's recommendations. For instance, there was no provision in the bill as passed for a direct reduction of taxes on property, and the industrial commission, instead of the unemployment relief commission, was given the administration of the act." The legislature also redistricted the state under the 1930 census.

The two proposals contained in the supplementary proclamation of January 19 were both adopted. Legislation was enacted to authorize cities, villages, and towns to extend the time of payment of taxes on real

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estate assessed in 1931 to persons who are unable to pay such taxes, until June 1, 1932, and also to authorize the executive council to reduce appropriations already made for the biennium by not to exceed twenty per cent. Although the governor in his first message specifically expressed opposition to flat salary reductions for state employees, his later recommendation that appropriations be reduced may to some extent have the result of reducing state salaries.[4]

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Direct Primary Legislation in 1930-31.[1] Although the legislature of every state in the Union was in regular session in 1930 or 1931, the harvest of enactments pertaining to the direct primary is relatively meagre. Among the more important pieces of legislation are the new laws of Idaho and Alabama, and the repeal of the presidential primary in Michigan.

The Idaho law is noteworthy because it marks the return of the direct primary as the method of nominating to all state-wide offices in this state. It will be remembered that in 1919 Idaho, after ten years of experience with direct nominations, restored to the convention power over nominations to the important offices of United States senator, representative in Congress, and all state offices elected by the state at large.[2] The new direct primary law extends to all national, state, district, and county offices,[3] and to all political parties casting ten per cent of the vote at the preceding general election.[4] The date is the fourth Tuesday of May.[5] To qualify as a candidate for nomination, an aspirant must file a declaration of candidacy and a petition signed by 200 to 300 voters, not more than twenty-five of whom may be from the same county (in the case of state offices), and pay a small filing fee.[6] Names are rotated on the ballot.[7] Permanent registration is provided for, but there is no party enrollment or challenge, and

[4] On a significant unemployment compensation law enacted at this same special session, see pp. 300-311 below.

[1] Legislation governing registration, absent voting, and corrupt practices is not included in this summary unless it related exclusively to the primaries. Kentucky, Louisiana, Mississippi, South Carolina, and Virginia held sessions in 1930 only; the legislatures of Illinois, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Texas, and Utah were in regular or special session in both 1930 and 1931; while in the remaining thirty-three states the legislatures were in session in 1931 only. The 1931 session laws of Arizona and Pennsylvania were not available when this note was prepared, and the legislation of those states is not included. The Pennsylvania legislature, after a long session, adjourned without passing Governor Pinchot's election bills. See *N.Y. Times*, June 7, 1931.

[2] *General Laws of Idaho*, 1919, p. 372.

[3] *General Laws of Idaho*, 1931, ch. 18, sec. 1, p. 30.

[4] *Ibid.*, sec. 2, p. 31.

[5] *Ibid.*, sec. 3, p. 31.

[6] *Ibid.*, secs. 5-8, pp. 31-34.

[7] *Ibid.*, sec. 11, p. 35.

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at the primary the voter is given the ballot of the political party with which he says he is affiliated.[8] A plurality vote is sufficient for nomination.[9] The party platform is drawn up after the primary by a convention composed of candidates for national and state office and the chairmen of the party county committees. This body also chooses the delegates to the national nominating conventions, and elects the chairman and other members of the state central committee.[10] The corrupt practices provisions of the act contain no novel features.[11]

The new Alabama statute follows the lines of the old law, with two important exceptions.[12] The bitter controversy between the supporters and opponents of Thomas J. Heflin is reflected in the regulations governing eligibility for candidacy and qualifications for participation in the primary. Persons whose names appear on the ballot must possess "the political qualifications prescribed by the governing body of his political party,"[13] and those who vote in the primary must also meet whatever tests are imposed by the political committees.[14] The law specifies that the test for qualifying as a candidate and participating as a voter need not be the same, thus giving the party committees a chance to juggle these provisions as party exigencies seem to require. Finally, on the primary ballot itself is printed the statement: "By casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election."[15] Certainly, Alabama has left nothing undone to make the rôle of "bolter" as unpleasant as possible.

The only other important change in the Alabama law is the abandonment of preferential voting and the substitution of a second, or "run-off," primary for assuring a majority choice.[16]

The repeal of the Michigan presidential primary can hardly be viewed as a great loss by those favoring direct control of the nominating process. The only means of control in this law was the preference vote, the delegates being chosen by the state convention, and friction between the popular preference and the individual preferences of the delegates frequently resulted.[17] The new law eliminates the presidential preference feature and provides that delegates to the national convention shall be selected as the state central committees of the parties prescribe.[18] Michigan's action leaves

[8] *Ibid.*, sec. 11, p. 37, and ch. 220, p. 426.
[9] *Ibid.*, ch. 18, sec. 31, p. 43.
[10] *Ibid.*, secs. 24-27, pp. 41-42.
[11] *Ibid.*, secs. 18-19, pp. 38-39.
[12] *General Acts of Alabama*, 1931, No. 56, pp. 73-96.
[13] *Ibid.*, sec. 9, p. 76.
[14] *Ibid.*, sec. 11, p. 76.
[15] *Ibid.*, sec. 16, pp. 78-79.
[16] *Ibid.*, sec. 14, p. 78; sec. 29, p. 84.
[17] See Overacker, *The Presidential Primary*, p. 62, for instances.
[18] *Public Acts of Michigan*, 1931, No. 113, p. 179; No. 200, p. 330.

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only fifteen mandatory presidential primary laws in operation as we approach the national conventions of 1932.[19]

Mississippi has codified its primary election law;[20] New Jersey has completely revised the act regulating elections;[21] and Ohio has amended the election code passed in 1929.[22] In none of these cases, however, have important changes been made in the nominating machinery. Virginia provided for a collation, revision, and codification of election laws, which is to be considered during the regular session of 1932.[23]

With the exception of the Idaho law already noted, there have been few important changes in the offices or the parties to which the direct primary applies. North Carolina has extended the primary election law to several more counties,[24] and a number of states have made it possible for cities or towns to use the direct primary in making nominations to local offices.[25] Illinois has amended the provisions governing the applicability of the primary to certain offices without making any important changes.[26] Rhode Island has passed a uniform caucus act for all towns, which supersedes all special acts except that applying to the town of Westerly.[27] The new Alabama act remains optional as before, but a new section provides that a party shall be presumed to have accepted the provisions of the act unless its state executive committee files a statement to the contrary at least sixty days before the primary.[28]

Oregon has joined the list of states providing for non-partisan nomination and election of judges. Names of candidates for the supreme, circuit, and district courts are to be printed on a special judiciary ballot without party designation. The names of the two candidates who poll the highest number of votes in the primary appear upon the final election ballot.[29]

Important changes in the definition of a political party and the regula-

[19] These states, in the order in which the primaries are to be held in 1932, are as follows: New Hampshire, North Dakota, New York, Wisconsin, Illinois, Nebraska, Massachusetts, Pennsylvania, California, South Dakota, Maryland, Ohio, New Jersey, Oregon, and West Virginia. Since 1928, Indiana as well as Michigan has repealed its presidential primary law.

[20] *Laws of Mississippi*, 1930, ch. 277, p. 582.

[21] *Acts of New Jersey*, 1930, ch. 187, p. 671.

[22] *Legislative Acts of Ohio*, vol. 114 (1931), pp. 679-714.

[23] *Acts of Virginia*, 1930, ch. 137, p. 350.

[24] *Public Laws of North Carolina*, 1931, ch. 16, p. 19; ch. 93, p. 123; ch. 108, p. 140; ch. 190, p. 246; ch. 203, p. 259; and ch. 450, p. 762.

[25] *Laws of Minnesota*, 1931, ch. 2, p. 8; *Laws of New York*, ch. 721, p. 1578; *Acts of South Carolina*, 1930, No. 735, p. 1252.

[26] *Laws of Illinois*, Act approved June 18, 1931, p. 556.

[27] *Acts and Resolves of Rhode Island*, 1930, ch. 1515, pp. 75-97.

[28] *General Acts of Alabama*, 1931, No. 56, sec. 1, p. 73.

[29] *General Laws of Oregon*, 1931, ch. 347, p. 607.

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tions governing the formation of new parties have been made in Illinois. Groups casting five per cent or more of the vote for governor in the last general election are defined as "established political parties" within the meaning of the direct primary law.[30] A new party may be formed by filing a petition signed by not less than 25,000 qualified voters. If at the next election it polls five per cent or more of the vote, it becomes an "established political party."[31] From now on, independent nominations likewise will require the signature of 25,000 (instead of 1,000) qualified voters.[32]

The changes in the dates of primaries in 1930-31 show a tendency to push them earlier rather than later, although Idaho is the only state to shift from fall to spring.[33] New Jersey has set the third Tuesday in May as the date of the primary in non-presidential as well as presidential years;[34] Oklahoma has changed from the last to the first Tuesday in July;[35] and Alabama from the second to the first Tuesday in June.[36] The new Mississippi code fixes a definite date for the primary instead of leaving the state committee some discretion in the matter.[37]

Amendments affecting qualifications for participation in the primary show the greatest diversity. North Dakota has repealed the party enrollment feature of its law, and now depends entirely upon the challenge method.[38] The new Idaho law, discussed above, makes no provision for party enrollment. On the other hand, the provisions of Alabama and New Jersey are designed to make it extremely difficult for any but *bona fide* members of the party to vote in its primary. The Alabama regulations have already been considered. New Jersey has made more explicit the tests of its tightly closed law, and has added an entirely novel provision. Any voter who within one year preceding any primary election has contributed toward the campaign funds of a political party will not be eligible to vote in the ballot box of any other political party at such election.[39] So far as the writer is aware, this is the first time that contributing to a campaign fund has been included in the tests of party membership. Colorado,

[30] *Laws of Illinois*, 1931, Act approved July 7, 1931, sec. 4, p. 550; Act approved June 29, 1931, p. 557.

[31] *Ibid.*, Act approved July 7, 1931, sec. 4, p. 550. [32] *Ibid.*, sec. 5, p. 551.

[33] *General Laws of Idaho*, 1931, ch. 18, sec. 3, p. 31. The date is changed from the first Tuesday in August to the fourth Tuesday in May.

[34] *Acts of New Jersey*, 1930, ch. 187, Art. XXII, par. 305, sec. 40. Formerly the date was the third Tuesday in June in non-presidential years.

[35] *Session Laws of Oklahoma*, 1931, ch. 29, Art. III, sec. 3, p. 94.

[36] *General Acts of Alabama*, 1931, No. 56, sec. 5, p. 74.

[37] *Laws of Mississippi*, 1930, ch. 277, p. 582.

[38] *Laws of North Dakota*, 1931, ch. 138, p. 221. Party enrollment was provided for in 1911.

[39] *Acts of New Jersey*, 1930, ch. 187, Art. XXII, par. 310, sec. 45, p. 671.

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Kentucky, and New York have amended the party enrollment features of their laws in minor particulars.[40]

Very few important changes concern the procedure governing the placing of names upon the primary ballot. Idaho and Illinois now require declarations of candidacy, as well as petitions,[41] and several states have made minor changes in the dates of filing petitions and the provisions for withdrawal.[42]

Rotation of the names on the primary ballot is provided for in the new Idaho law for the first time,[43] and Michigan has amended its rotation provision.[44] However, the most interesting provisions affecting the arrangement of the ballot reflect concerning growing out of the "Senator Norris"—"Grocer Norris" farce which arose in Nebraska in the 1930 primaries. Nebraska lawmakers have attempted to eliminate the repetition of such a dilemma by providing that when two or more of the surnames of candidates for the same office are the same in spelling or sound, the officer responsible for preparing the primary ballot, upon request of either candidate, shall print his postoffice address and occupation after his name on the ballot.[45] Michigan has incorporated a similar safeguard into its law,[46] and California makes it possible for the candidate to have inserted after his name on the ballot words designating his profession or occupation, the title of a public office which he holds, or the fact that he is the incumbent of the office for which he is seeking election.[47]

Alabama's conversion to the second, or "run-off," primary[48] (mentioned above) leaves Maryland the only state in which preferential voting survives as a method of assuring nomination by a majority of the voters.[49] Oklahoma, whose experiment in preferential voting met an early death at the hands of the courts, has had the "run-off" feature of its 1929 act upheld by the state supreme court.[50] In 1931, Oklahoma extended this

[40] *Session Laws of Colorado,* 1931, ch. 91, p. 331; *Acts of Kentucky,* 1930, ch. 48, p. 114; *Laws of New York,* 1931, ch. 244, p. 626.

[41] *General Laws of Idaho,* 1931, ch. 18, secs. 5-8, pp. 31-34.

[42] *Laws of Illinois,* 1931, Act approved July 7, 1931, p. 558; *Laws of Indiana,* 1931, ch. 156, p. 550; *Public Acts of Michigan,* 1931, No. 200, p. 330; *Laws of Nebraska,* 1931, ch. 51, p. 155; *Session Laws of Oklahoma,* 1931, ch. 29, Art. I, sec. 1, p. 89; and *Laws of South Dakota,* 1931, ch. 145, p. 191.

[43] *General Laws of Idaho,* 1931, ch. 18, sec. 11, p. 35.

[44] *Public Acts of Michigan,* 1931, No. 200, p. 339.

[45] *Laws of Nebraska,* 1931, ch. 61, p. 169.

[46] *Public Acts of Michigan,* 1931, No. 200, p. 338.

[47] *Statutes of California,* 1931, ch. 1076, p. 2272.

[48] *General Acts of Alabama,* 1931, No. 56, sec. 14, p. 78, and sec. 29, p. 84.

[49] Eleven states have tried preferential voting. See Merriam and Overacker, *Primary Elections,* pp. 83-85. Florida abandoned preferential voting in 1929.

[50] *N. Y. Times,* May 28, 1930.

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feature to cities and towns of not less than 5,000,[51] and both Oklahoma and North Carolina modified the details of their run-off laws slightly.[52]

Hereafter, in order to receive a nomination in Maine not only must one receive the highest number of votes, but the number received must equal the number of voters required to place a name on the ballot by petition.[53] Washington now requires a candidate nominated by a "written in" or "sticker" vote to pay the filing fee required of those whose names appear on the ballot.[54] No candidate for nomination in a primary election in South Carolina may be required to resign from any other office held by him as a condition for entering that contest.[55]

Minor changes in the provisions governing party committees and conventions have been made by California, Idaho, Missouri, New Jersey, South Dakota, and Texas.[56]

The only notable attempt to regulate expenditures in primary campaigns is found in the new Maine law. This act, which takes the place of the admittedly ineffective provisions of the law adopted by popular initiative in 1911,[57] requires complete pre-election publicity of all expenditures made by or on behalf of candidates, requires the publication of these statements in daily or weekly newspapers, and abandons any attempt to place a limitation upon the amount spent by or on behalf of a candidate.[58] The new Idaho law limits both the amount and the character of expenditures, but requires *post*-primary publicity only, and makes no attempt to concentrate responsibility for expenditure or to insure publicity of the statements filed.[59]

The primary legislation of the last two years shows no trend toward

[51] *Session Laws of Oklahoma,* 1931, ch. 33, Art. II.

[52] *Ibid.,* ch. 29, Art. I, sec. 2, p. 90; *Public Laws and Resolutions of North Carolina,* 1931, ch. 254, p. 311.

[53] *Laws of Maine,* 1931, ch. 75, p. 57.

[54] *Laws of Washington,* 1931, ch. 14, p. 54.

[55] *Acts and Joint Resolutions of South Carolina,* 1930, No. 713, p. 1226.

[56] *Statutes of California,* 1931, ch. 1002, p. 2004 (composition of county committees); *General Laws of Idaho,* 1931, ch. 18, secs. 24-27, pp. 41-42 (composition and duties of state convention); *Laws of Missouri,* 1931, p. 208 (election of ward committees in cities of 5,000 or more); *Acts of New Jersey,* 1931, ch. 374, p. 948 (date of meeting of county committee), and ch. 42, p. 86 (composition of party convention); *Laws of South Dakota,* 1931, ch. 146, p. 192 (proposing names of precinct committeemen); *General Laws of Texas,* 1930 (special), ch. 4, p. 4 (giving supreme court power to mandamus members of party committees to compel performance of duties imposed by law).

[57] *Laws of Maine,* 1913, ch. 221, p. 313. For a discussion of the defects of this law, see O. C. Hormell, *Cost of Primaries and Elections in Maine* (Bowdoin College Bulletin No. 157, Municipal Research Series No. 6).

[58] *Laws of Maine,* 1931, ch. 263, p. 295.

[59] *General Laws of Idaho,* 1931, ch. 18, secs. 18-19, pp. 38-39.

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novel lines of experimentation or radical reconstruction of the nominating machinery. It exhibits, rather, an acceptance of existing legislation in its broad outlines and a tendency to deal with minor defects as they become apparent.

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The Wisconsin Unemployment Compensation Law of 1932. Ever since the adoption of an unemployment insurance act by Great Britain in 1912, the subject of such social legislation has found a widespread academic interest in the United States. The post-war enactments of labor insurance legislation by Italy, Russia, and Germany indicate the growing concern of industrial nations over the problem of labor security. From 1912 to 1927, nine governments created some system of unemployment insurance.[1] American labor economists and political scientists have watched with interest these foreign experiments. In Wisconsin, largely as a result of the influence of certain members of the University faculty, the problem of unemployment insurance has been under political consideration for ten years. The first bill was introduced in the 1921 session of the legislature, and similar measures have been proposed in every subsequent session.[2] Throughout the past decade, the discussion in Wisconsin of the problems of such legislation has been continuous. Due to the magnitude of the unemployment problem during the present depression, interest and study have been heightened here as well as in other states. In 1931, thirty-three unemployment insurance bills were introduced in seventeen states.[3] In Congress, Senator Wagner of New York proposed that the federal government render assistance to those states setting up systems of unemployment insurance. And six states appointed committees to study the problem of such insurance.[4]

In the regular 1931 session of the Wisconsin legislature, three different bills dealing with unemployment insurance were introduced, and lengthy hearings and conferences were held at which representatives of labor, industrial leaders, and economic experts discussed the relative benefits and detriments of unemployment insurance legislation. No agreement on these bills proved possible, and no vote was taken by the legislature. Instead, the legislature created a special interim committee on unemployment to study

[1] Great Britain, Italy, Russia, Austria, Queensland, Poland, Irish Free State, Bulgaria, and Germany.

[2] *Report of the Wisconsin Legislative Interim Committee on Unemployment* (November 10, 1931), p. 33.

[3] California, Colorado, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota, Ohio, Pennsylvania, Washington, Wisconsin. 21 *American Labor Legislation Review*, 332 (Sept. 1931).

[4] California, Massachusetts, New York, Ohio, Oregon, Wisconsin. *Ibid.*

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unemployment insurance and related problems.[5] The resolution instructed the committee to report back to a special legislative session, if called by the governor the following fall.

The interim committee, composed of two senators, three assemblymen, and two private citizens, conducted investigations and held hearings throughout the state. The evidence on unemployment collected by the committee proved shocking to those who had previously thought that Wisconsin was in a sounder economic condition than most other American commonwealths. One out of every six wage-earners in the state, it was learned, is wholly unemployed. And if lost time due to less than full-time employment is also taken into consideration, the total amount of unemployment is equivalent to one-quarter of all the wage-earners in the state being entirely without jobs. In other words, the committee learned that there is relatively more unemployment in Wisconsin today than in Great Britain.[6] The Wisconsin industrial commission estimated on September 15, 1931, that 83,000 factory workers and 56,000 other workers were totally unemployed. Since September, 1929, the average weekly hours worked by factory employees has declined twenty per cent.[7] In October, 1929, the ten state employment agencies reported a ratio of 128 applicants for every one hundred jobs; in October, 1931, the ratio had changed to 249 applicants for every one hundred jobs.[8]

Unemployment, the committee learned, is caused by a variety of forces, and can be classified into different types. Persistent or chronic, seasonal, technological, depressional or cyclical unemployment—these are the groupings under which the committee classified the problem of unemployment.[9] While the dramatic nature of depressional unemployment has called attention to this problem, the committee nevertheless refused to forget that we have always had the other types of unemployment, in good times as well as in bad.[10]

The committee felt that the solution of the long-run problem of unemployment lies in providing a more adequate and orderly system of relief for the unemployed, and in making all the progress possible in so organizing industry as to keep workers steadily employed. It consequently proposed that industry set up reserves for unemployment, just as it now does for depreciation costs, taxes, interest, and dividends.[11] Unemployment insurance is, in effect, an extension of the reserve principle to cover the regular workers in industry as well as the bond- and stock-holders. Within

[5] Joint Resolution 113, 1931 session of Wisconsin legislature.
[6] *Report of the Wisconsin Legislative Interim Committee on Unemployment*, p. 7.
[7] *Ibid.*, p. 14.
[8] *Ibid.*, p. 15.
[9] *Ibid.*, p. 8.
[10] *Ibid.*, p. 12.
[11] *Ibid.*, pp. 34-35.

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reasonable limits, the committee argued, the worker should be assured a similar security of income. If he cannot be given regular employment, he should be paid some compensation while unemployed. To provide for such compensation, his employer should build up an unemployment reserve. This reserve should be made a part of the recognized cost of production. "The maintenance of idle men should come to be regarded as analogous to the maintenance of idle machinery; both should be seen to be part of the necessary expense of doing business which must be covered by the price charged for the product."[12] The cost of maintaining unemployment reserves, the committee was convinced, would impel employers to experiment with techniques of employment regularization, just as the cost of accident compensation has stimulated the movement for increased industrial safety.[13] In addition to such a stimulation to regularization in normal years, unemployment insurance would, on the one hand, discourage some of the undue expansion of prosperous times and, on the other, put additional purchasing power into the hands of the workers in time of depression.[14]

The committee frankly recognized that unemployment compensation is only part of a complete program for coping with the unemployment problem. Such compensation should be supplemented by a reduction in working hours and by the development of a public works program for use in periods of prolonged depression.[15]

Thus, as part of its entire unemployment program, the Wisconsin interim committee recommended the adoption of unemployment insurance or compensation legislation. The special session of the 1931 legislature passed the act introduced by the committee;[16] and on January 28, 1932, Governor LaFollette signed the measure.

The Wisconsin unemployment compensation act begins with a declaration of public policy, which asserts that unemployment has become an urgent public problem gravely affecting the health, morals, and welfare of the people. The burden of irregular employment, the declaration continues, now falls directly and with crushing force on the unemployed worker and his family, and results also in an excessive drain on agencies for private charity and for public relief. Instead, the statute declares, the industrial and business units of the state should pay at least a part of this social cost caused by their own irregular operations.[17]

"The economic burdens resulting from unemployment," declares the statute, "should not only be shared more fairly, but should also be de-

[12] *Ibid.*, p. 36.
[13] *Ibid.*, pp. 37-38.
[14] *Ibid.*, p. 38.
[15] *Ibid.*, p. 42.
[16] The Assembly vote was 63 to 15; the Senate vote, 19 to 9.
[17] *Laws of Special Session of the 1931 Wisconsin Legislature*, ch. 20, sec. 2, 108.01 (1).

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creased and prevented as far as possible. A sound system of unemployment reserves, contributions, and benefits should induce and reward steady operations by each employer, since he is in a better position than any other agency to share in and to reduce the social costs of his own irregular employment. Employers and employees throughout the state should coöperate, in advisory committees under government supervision, to promote and encourage the steadiest possible employment. A more adequate system of free public employment offices should be provided, at the expense of employers, to place workers more efficiently and to shorten the periods between jobs. Education and retraining of workers during their unemployment should be encouraged. Governmental construction providing emergency relief through work and wages should be stimulated. A gradual and constructive solution of the unemployment problem along these lines has become an imperative public need.''[18]

The act provides a period of a year and a half during which employers may set up voluntary systems of unemployment compensation. If by June 1, 1933, the employers of not less than 175,000 workers have voluntarily established plans approved by the state industrial commission, then the compulsory state system will not be put into operation, and no other employers will be compelled to set up employment reserves.[19] If the compulsory state system should not come into operation, the industrial commission is empowered to supervise the operation of the voluntary plans of insurance.[20] Even if such a widespread system of voluntary unemployment compensation should not be established before June, 1933, the statute permits the industrial commission to exempt from the state system any employer who, under a plan approved by the commission, guarantees his employees forty-two weeks of work or wages a year for at least thirty-six hours a week.[21] As a condition of granting such exemption, the commission may require the employer to furnish security sufficient to assure the payment of all promised benefits.[22]

The compulsory state compensation plan covers employers who have for four or more months within the preceding year employed ten or more persons. The four-month provision will result in an exclusion of the most seasonal industries. The act specifically exempts farm laborers, domestic servants, employees in a governmental unemployment relief project, public officers, teachers, persons unable or unwilling to work normal full-time, employees of a railroad engaged in interstate commerce, and employees engaged in logging operations.[23] If a person has received $1,500 or more

[18] *Ibid.*, sec. 2, 108.01 (2), (3).
[19] *Ibid.*, sec. 1 (1), sec. 3 (1).
[20] *Ibid.*, sec. 3 (5).
[21] *Ibid.*, sec. 2, 108.15 (1).
[22] *Ibid.*, sec. 2, 108.15 (4).
[23] *Ibid.*, sec. 2, 108.02 (e).

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in wages during the past year, he is barred from the benefits of the act.[24] Nor does the statute apply to any employee who has not been a resident of Wisconsin for the two years preceding the beginning of his period of unemployment, or who has not been gainfully employed in the state for forty weeks within such two-year period.[25] If an employee loses his job through misconduct, if he leaves it voluntarily without good cause attributable to his employer, if he leaves his employment because of a trade dispute, or if an "act of God" closes his place of work, then he is not eligible for employment compensation.[26] Moreover, an employee is no longer eligible if he refuses to accept suitable employment when offered to him through the district public employment office.[27]

The Wisconsin compulsory state plan differs in its financial aspects from the systems of England and Germany. The English system of unemployment insurance divides the costs among the employer, the employee, and the state; while the German plan calls for contributions from the employer and the employee. The new Wisconsin statute, however, places the entire cost upon the employer alone. It treats unemployment as a cost of production, like depreciation or accident compensation, and insists that this cost be included among the overhead expenses of the business. Moreover, the European systems require contributions from employers regardless of the nature of their business or the amount of unemployment in their establishments.[28] In both the British and German systems, the funds from all employers and employees in all industries and in all establishments are pooled together. The Wisconsin law, on the other hand, provides a separate fund for each employer and adjusts the payments of each according to the amount of unemployment in his own establishment. The responsibility of each employer for the unemployment in his own business is thus made clean-cut. By this method it is hoped that individual employers will be induced to exert their maximum efforts to reduce the amount of unemployment in their own establishments. The Wisconsin statute thus borrows more from the American experience with industrial accident compensation law than from the European legislation on unemployment insurance. Each employer, except those establishing voluntary plans, is

[24] *Ibid.*, sec. 2, 108.04 (5).
[25] *Ibid.*, sec. 2, 108.04 (5).
[26] *Ibid.*, sec. 2, 108.04 (8).
[27] *Ibid.*, sec. 2, 108.04 (6).
[28] The British unemployment insurance law of 1920 provides for payments on the following ratio for each employee per week: employer, 8¢; employee, 8¢; the government, 4¢. This amount does not vary with different industries and under changing conditions. Commons and Andrews, *Principles of Labor Legislation* (1927), pp. 488-9. The German act of 1927 provides that the employers within each district of the country shall pay 1½ per cent of the wage pay-rolls and the employees 1½ per cent of their wages, until a reserve is established sufficient to care for 600,000 unemployed workers for three months; then the rate for a district may be lowered. 28 *Monthly Labor Review*, 91 (Jan., 1929).

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required to pay into a state fund an amount equal to two per cent of his pay-roll. Whenever an employer's account amounts to $55 per employee, his contributions are to become one per cent; and whenever his reserve reaches the sum of $75 per employee, he is required to pay no further contributions.[29]

Under the Wisconsin state plan, an unemployed worker receives compensation for total unemployment at the rate of fifty per cent of his average weekly wages; however, he may not receive more than $10 nor less than $5 a week.[30] A waiting period of two weeks is established before which an unemployed worker becomes eligible for compensation;[31] nor may he receive more than ten weeks of benefits a year.[32] These benefits are to be paid by the industrial commission to each unemployed worker from his employer's account in the state fund.[33] The amount of benefit payable to an unemployed worker obviously is thus limited by the amount of money accredited to his employer's account.[34]

The administration of the act calls for a close coöperation with the state employment agencies. Any claimant of benefits must give notice of his unemployment to the public employment office for the district in which he was last employed; likewise, the industrial commission may require from each employer notification of the total or partial unemployment of his employees.[35] Claims for benefits must be filed with the superintendent of the district employment office or with a deputy of the industrial commission.[36] The statute provides machinery for appeals from the finding of the superintendent to a district appeal board, then to an examiner of the commission, and finally to the commission itself.[37] Inasmuch as the efficient operation of this system depends upon the use of the public employment offices, the commission is empowered to create as many employment districts and district appeal boards, and as many free public employment offices, as it deems necessary.[38] With the objective in mind of stabilizing employment, the commission may appoint advisory committees of employers, employees, and representatives of the public to assist the commission and to promote the regularization of employment.[39] The cost of the state administration is to be borne by the employers, each contributing two-tenths of one per cent of his pay-roll for this purpose.[40]

Since many members of the legislature and many of those appearing before the legislative interim committee that drafted this measure felt that it is better to give the unemployed laborer work and wages than to

[29] *Laws of Special Session of the 1931 Wisconsin Legislature*, ch. 20, sec. 2, 108.18.
[30] *Ibid.*, sec. 2, 108.05 (1).
[31] *Ibid.*, sec. 2, 108.04 (4).
[32] *Ibid.*, sec. 2, 108.05 (3).
[33] *Ibid.*, sec. 2, 108.03 (1), 108.06 (3).
[34] *Ibid.*, sec. 2, 108.05 (3).
[35] *Ibid.*, sec. 2. 108.08 (1), (2).
[36] *Ibid.*, sec. 2, 108.09 (1).
[37] *Ibid.*, sec. 2, 108.10 (3), (4), (5).
[38] *Ibid.*, sec. 2, 108.10 (4).
[39] *Ibid.*, sec. 2, 108.14 (6).
[40] *Ibid.*, sec. 2, 108.19.

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give him cash alone, the act provides that any unit of government may give work to an unemployed worker upon some public project and may utilize, toward paying him wages, the benefits that he would otherwise have received from his employer.[41] In addition, the superintendent of a district employment office may recommend that an unemployed worker attend vocational or other school during his unemployment; if he does so and achieves satisfactory work in his classes, he becomes eligible for an additional benefit of one dollar a week.[42] It is hoped that this positive inducement will encourage unskilled, unemployed laborers to retrain themselves vocationally during their periods of unemployment.

It is interesting to note that within less than one month after the signing of the Wisconsin statute by Governor LaFollette, an interstate commission representing the governors of Massachusetts, New York, Ohio, Pennsylvania, New Jersey, and Connecticut recommended the adoption of compulsory unemployment insurance. In its main outlines, the proposal made public by Governor Ely of Massachusetts on February 14 follows the provisions of the Wisconsin law.[43]

An analysis of the constitutionality of a state unemployment compensation law is undoubtedly fraught with dangerous pitfalls. Even the learned judges who sit behind the supreme bench of the United States shun the issuance of advisory opinions. The very delay that undoubtedly will occur before the United States Supreme Court hands down a definitive decision on this legislation enhances the difficulties inherent in a prediction of conclusions from the judicial process. A case involving the validity of the Wisconsin statute may get into the courts in a variety of ways. Some employer may violate the terms of the act and the state may prosecute him, thus leading through demurrer or appeal to a determination of the validity of the statute under which he is indicted. Some employer may petition the courts for an injunction to restrain the industrial commission from enforcing the act, on the grounds that it is unconstitutional and that its enforcement will cause irreparable damages. If a foreign corporation doing business in Wisconsin should bring such action, it may choose to do so in the United States district court. The validity of the act may be raised in a suit between an employer and an employee over the terms of the wage contract; such a suit is made possible by the provisions in the statute forbidding the employer to deduct any portion of his contributions from his employees' wages.[44] Or it is possible that an employee who believes—or is induced by an employers' association to believe—that he will lose his job if his employer is required to establish unemployment

[41] *Ibid.*, sec. 2, 108.25 (1). [42] *Ibid.*, sec. 2, 108.26.

[43] *Chicago Tribune*, Feb. 15, 1932; *N. Y. Times*, Feb. 15, 1932.

[44] *Laws of Special Session of the 1931 Wisconsin Legislature*, ch. 20, sec. 2, 108.11 (1).

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reserves may institute injunction proceedings. This device was employed to test the validity of the District of Columbia minimum wage law for women.[45] However, inasmuch as the compulsory features of the law do not go into effect until July 1, 1933, it is difficult to see how a case can get before the courts much before that date. Considerable ingenuity will be necessary in order to frame a justiciable controversy, with real parties and vital and immediate interests, before the state commences its administration of the compulsory plan, which possibly may never go into effect. A premature attempt to test the constitutionality of the act will be considered by the courts as similiar to a request for an advisory opinion and, therefore, as a non-justiciable controversy.[46] Moreover, there is a feeling among many of the state's industrial leaders that an attempt to test the validity of the statute at the present time would prove poor strategy. If they undertake legal action now, they will be unable to induce enough employers to establish voluntary systems of insurance before June 1, 1933, to avert the enforcement of the compulsory state plan; and then, if the act is held valid, they will all be compelled to come under the compulsory features of the law. Despite these considerations, however, a case involving the validity of the law may reach the courts shortly; there are several attorneys who desire to argue such a case, and who are anxious to find a client to fight the law and to pay the legal fees.

From this precursory statement of the methods that may be employed to test the constitutionality of the Wisconsin legislation, it can be seen that an appeal involving the statute may possibly not reach the United States Supreme Court until 1934 or 1935. In that interval, important changes may occur in the personnel of the Court, and with the new appointments there may develop important revisions in the legal philosophy of that tribunal. We have merely to note the significant shift in the Court's approach to the problem of the state police power when Justices Roberts and Hughes succeeded Taft and Sanford in order to realize the significance of a change in personnel.[47] The recent appointment of Justice Car-

[45] Adkins v. Children's Hospital, 261 U.S. 525 (1923).

[46] Muskrat v. U. S., 219 U.S. 346 (1911); Fairchild v. Hughes, 258 U.S. 126 (1922); Massachusetts v. Mellon, 262 U.S. 447 (1923). See also *ex parte* Young, 209 U.S. 123 (1908), and Tyson v. Banton, 273 U.S. 418 (1927), in which injunctions were employed successfully to test the validity of a statute before its actual enforcement.

[47] Note especially O'Gorman and Young v. Hartford Fire Insurance Co., 282 U.S. 251 (1931), and State Board of Tax Commissioners of Indiana v. Jackson, 283 U.S. 527 (1931). In both of these cases, the majority of the court, then consisting of Justices Holmes, Brandeis, Stone, Roberts, and Hughes, upheld the state statutes; while the minority—Justices Butler, Sutherland, Van Devanter, and McReynolds—opposed the constitutionality of these acts and in their dissenting opinions quoted a long series of Supreme Court decisions on due process and police power.

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dozo will undoubtedly influence the Court. The following brief inquiry into the validity of the Wisconsin statute is not, therefore, an attempt to predict the workings of judicial minds probably not yet appointed to the bench. Rather, it will attempt to point out the various approaches that may be taken in a legal judgment upon this legislation. Only one conclusion, the writer believes, will result, namely, that a compulsory unemployment insurance law falls in the twilight zone of police power cases, in the decision of which, more than in any other field of law, the social and economic philosophies of the judges play an immeasurable rôle.

The lines of development for an attack upon the constitutionality of unemployment insurance legislation are clear. In the first place, it may be argued that such legislation regulates essential terms of the wage contract, and that, by limiting the free bargaining between the employer and employee, it interferes with liberty of contract.[48] The minority report of the Wisconsin interim committee raised this problem. The two dissenting members of the committee maintained that the state compensation law encroaches on the freedom of action of both workers and employers. "One of the real liberties enjoyed by the American workmen is their right to apply for their own jobs, to come and go as they see fit, changing their employment when they deem it to their advantage to do so. Under this proposed plan, the worker becomes the subject of a state bureau, with 100 branch offices, with which he must register when unemployed and whose dictate he must follow when assigned to what is termed 'suitable employment.' "[49] In the second place, it may be contended that this social legislation, by demanding from the employer contributions to the state unemployment reserve fund amounts as high as two per cent of his annual pay-roll, deprives him of his property—namely, profits—without due process of law.[50] In the third place, it may be pointed out that many of the businesses and industries subjected to this act are not public callings, and are not, therefore, subject to strict public regulation.[51] And, in the fourth place, those provisions in the statute against deductions by the employer from his employees' wages to finance his contributions to the unemployment reserves may be interpreted as permitting, in the last analysis, the industrial commission to determine wages. The industrial

[48] Coppage v. Kansas, 236 U.S. 1 (1915); Adair v. U. S., 208 U.S. 161 (1907); Lockner v. N.Y., 198 U.S. 45 (1905); Adkins v. Children's Hospital, 261 U.S. 525 (1922); Chas. Wolff Packing Co. v. Court of Industrial Relations of State of Kansas, 262 U.S. 522 (1923), 267 U.S. 552 (1925).

[49] *Report of the Wisconsin Legislative Interim Committee on Unemployment* (1931), pp. 67-68.

[50] Adkins v. Children's Hospital, 261 U.S. 525 (1922).

[51] Chas. Wolff Packing Co. v. Court of Industrial Relations of State of Kansas, 262 U.S. 522 (1923); Tyson v. Banton, 273 U.S. 418 (1927); Adams v. Tanner, 244 U.S. 590 (1916); Ribnik v. McBride, 277 U.S. 350 (1928).

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commission is empowered by the act to hear appeals from employees who claim that their employer has deducted moneys from their wages for such a purpose. Consequently, the act may fall under the ban of judicial decisions against governmental price fixing.[52] These approaches to the conclusion of invalidity demand a closer analysis than this brief paper can devote to the problem. In general, it may be stated that the legal arguments against the constitutionality of the law are based upon what Dean Pound calls a jurisprudence of concepts.[53]

The case for the constitutionality of the Wisconsin unemployment compensation act must, on the other hand, be based upon a jurisprudence of social interests.[54] The changing economic order and the consequent changing rôle of the individual in the complicated industrial, urban civilization of today are having their repercussions in the field of law. Gradually, judges and jurists are abandoning the nineteenth-century concept of law as the absolute expression of the eternal verities. The new jurisprudence is slowly but surely substituting a relativist view of law as an institution of society that must necessarily change to accommodate itself to the changes in economic institutions. Law is now being viewed as a means toward an end. This new philosophy of law has found expression in the opinions of Justices Oliver Wendell Holmes, recently retired, Louis D. Brandeis, and Benjamin N. Cardozo, formerly chief justice of the New York Court of Appeals and recently appointed to the United States Supreme Court, and in the teachings of Roscoe Pound, dean of the Harvard Law School.

Justice Holmes bitterly attacked the application to law of Spencerian individualism. He took a strong stand against the interpretation of the Fifth and Fourteenth Amendments adopted by the Court. The Fourteenth Amendment, he protested, "does not enact Mr. Herbert Spencer's *Social Statics*."[55] Holmes frequently pointed out the dangers of "a delusive exactness in the application of the Fourteenth Amendment." By calling a business "property," he complained, we make it seem like land, and lead up to the conclusion that a statute cannot substantially cut down the advantages of ownership existing before the statute was passed. Business is a course of conduct, and like other conduct is subject to substantial modification according to time and circumstances, both in itself and in regard to what shall justify doing it a harm.[56] In general, he held that the legislature, federal or state, should be permitted to prescribe for the

[52] Tyson v. Banton, 273 U.S. 418 (1927); Ribnik v. McBride, 277 U.S. 350 (1928).

[53] R. Pound, *The Spirit of the Common Law* (1921), p. 205.

[54] *Ibid.*, pp. 203-5; also "A Theory of Social Interests," *Proceedings of American Sociological Society* (1920), XV.

[55] Lockner v. N.Y., 198 U.S. 45, 75 (1904).

[56] Truax v. Corrigan, 257 U.S. 312, 342 (1921).

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economic and social ills of the country. The strict and literal application of the due process and contract clauses means the substitution of judicial attitudes for that of the legislature.[57]

The legal philosophy of Justice Brandeis likewise takes cognizance of the fundamental revolution in social institutions. Practically every change in the law governing the relation of employer and employee, he holds, must in some respect abridge the liberty or property of one of the parties, if liberty and property be measured by the standard of the law previously prevailing. Although the change may involve interference with existing liberty or property of individuals, the Court should not declare the statute a violation of the due process clause, unless it finds that the interference is arbitrary or unreasonable, or that, "considered as a means, the measure has no real or substantial relation of cause to a permissible end." Whether a law enacted in the exercise of the police power is justly subject to the charge of being unreasonable or arbitrary, Brandeis maintains, can ordinarily be determined only by a consideration of the contemporary conditions, social, industrial, and political, of the community to be affected thereby. Resort to such facts is necessary in order to appreciate the evils sought to be remedied and the possible effects of the remedy proposed. Nearly all legislation involves a weighing of public needs as against private desires, and likewise a weighing of relative social values. Since government is not an exact science, prevailing public opinion concerning the evils and the remedy is among the important facts deserving consideration. In passing upon the validity of a law challenged as being unreasonable, the Court may profitably derive aid from the experience of other countries and of the several states in the Union.[58]

Similarly, Dean Pound looks upon law as "an attempt to reconcile, to harmonize, to compromise" the overlapping or conflicting social interests or needs of the community. Law achieves this end "either through securing them directly and immediately, or through securing certain individual interests or delimitations or compromises of individual interests, so as to give effect to the greatest number of interests or to the interests that weigh most in our civilization, with the least sacrifice of other interests."[59]

The case on behalf of the validity of the Wisconsin statute must be

[57] Adkins v. Children's Hospital, 261 U.S. 525, 567 (1922).

[58] Truax v. Corrigan, 257 U.S. 312, 354-357 (1921). Brandeis, in his decisions, follows this procedure; he collects and presents vast amounts of factual detail concerning the evils that the statute is aimed to remedy and the operation of similar laws elsewhere. A good example of this method can be found in his dissenting opinion in Adams v. Tanner, 244 U.S. 590, 597 (1916).

[59] "A Theory of Social Interests," *Proceedings of American Sociological Society* (1920), XV, 44.

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fought through this concept of law as a balancing of social interests. The introduction of evidence as to the social and economic consequences of unemployment, and as to the relation of this act to the partial solution of the unemployment problem, will conform with Justice Brandeis's method of determining whether this statute, "considered as a means," has any "real or substantial relation of cause to a permissible end." The nearest parallels in judicial annals to unemployment compensation are the Supreme Court's decisions sustaining state accident compensation laws.[60] These acts abolished the old common law defenses of the employer in industrial accident cases and shifted the cost of industrial accidents to the shoulders of the employer. They made the cost of accidents part of the overhead expenses of industry, just as the present Wisconsin law aims to make the cost of unemployment such an expense. The provision in the Wisconsin law placing the entire cost of maintaining the unemployment plan upon the employer finds its parallel in the Court's decision in the case of Noble State Bank v. Haskell.[61] In this case, the Court sustained an Oklahoma statute establishing a depositors' guarantee fund and assessing the costs upon the banks of the state.

These few comments on the legal phases of the Wisconsin unemployment compensation act obviously do not definitively solve the now major question of its constitutionality. With the inexactness that inevitably pervades constitutional science, such a solution demands prophetic as well as legal ability. The above notes aim merely to contrast the conflicting judicial concepts and categories that hover about the problem. Undoubtedly, the whole subject of unemployment insurance will increase in national importance. Already, as we have noted, other states are following the lead of Wisconsin. The constitutionality of such legislation as the Wisconsin unemployment compensation act demands widespread and careful study.

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Research Work of the American Legislators' Association. The research work of the American Legislators' Association falls into two divisions: (1) a survey of the sources of legislative information; (2) a study of the legislative process.

The Legislators' Association is an organization of law-makers. It has been fostered by a growing feeling that effective laws are not the inevitable result of campaign oratory, back-slapping, or vote-trading. Many legis-

[60] N.Y. Central R.R. Co. v. White, 243 U.S. 188 (1927); Mountain Timber Co. v. Washington, 243 U.S. 219 (1917); Arizona Employers' Liability Cases, 250 U.S. 400 (1919).

[61] Noble State Bank v. Haskell, 219 U.S. 104 (1910).

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lators desire to take advantage of the experience of other states, but find it difficult to learn much about that experience. Others would like to consult research workers who have been studying the problems which perplex them, but lack facilities for discovering these experts. The American Legislators' Association is the antenna of these legislators in their quest for assistance. Its first task, therefore, is to discover who is preparing material for the legislative market.

Legislation touches an extremely large number of problems. For this reason, a considerable proportion of the research work in the social sciences has legislative implications. Questions are constantly arising on which expert advice can be given by research workers in the fields of sociology, education, or law, as well as those of political science and economics. Many of these experts are connected with universities, but it also frequently happens that doctors, lawyers, and social workers develop legislative hobbies and do very reliable work on them.

The typically American way of securing information, however, is through an organization, a committee, a bureau, or an institute. Some of these organizations are frankly propagandist; others have no ulterior motives. Some have large staffs and adequate facilities; others are mere paper organizations centering around single individuals. Some are privately supported, others are public or quasi-public in character. Some are actively interested in legislation; for others, legislative work is incidental.

A list of the names and addresses of these organizations is only a beginning. It is also necessary to know the subjects that each organization is working on, and especially the specific aspect of the subject it is interested in. It is even more important to know which individuals in each organization are interested in these subjects, how adequate their facilities for work are, and how biased their conclusions are likely to be. It is quite as important that this information be kept up to date by continual revision as that it be exhaustive.

The time-honored method of trial and error has proved temporarily useful in this work. Requests for information are continually pouring into the Interstate Legislative Reference Bureau, which is conducted by the Association. In many cases, the inquirer is placed in direct contact with a valuable source of information. But if the subject is a new one, it becomes necessary to survey the field. A few minutes spent with the published lists of research projects will usually indicate to whom we may turn, even if our own memories do not call any name to mind. If all these sources fail us, the task is more complicated, but by no means hopeless. By a series of inquiries to persons in closely related fields, it is usually possible to find someone who can name the individual or organization most interested in the given question.

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Sometimes it is desirable to make a systematic survey of one class of organizations. The legislative reference bureaus are among the most active, and at the same time most valuable, sources of information on legislation. They frequently are called upon to investigate legislative subjects, and their work is invariably impartial, usually thorough, and often exhaustive. One of the first tasks of the Legislators' Association was to compile a current list of these bureaus. The older lists proved useful starting points, even though many changes had occurred since their publication.

The questions asked related to the official name of the bureau, and the department in which it is located, the title of the chief administrative officers, and the kind of service rendered. The returns from this inquiry were encouraging, but incomplete. It was necessary to supplement them by personal correspondence extending over a period of several months. A table, prepared from information gathered, was published in *State Government*, and has since been published periodically in revised form. This table is the only accurate and up-to-date list of these agencies in existence. In a similar manner, a list has been compiled of the interim committees and commissions authorized in 1929, and again in 1930-31.

The second part of the research work of the American Legislators' Association involves the law-making process itself. In this branch of its activity, the Association is interested in legislatures rather than legislation—the legislative process rather than the substance of legislation. The composition, organization, and procedure of the state legislatures are significant in this connection, as are the methods and work of those agencies which assist in the process, e.g., the revisors of statutes, interim committees and commissions, bill-drafting agencies, and legislative reference departments. The research activities on these topics range all the way from compiling a simple table showing the twenty-two special sessions held this year (see *State Government* for December, 1931) to an elaborate study of the length of legislative sessions (see *State Government* for July, 1931). Indeed, the entire process of law-making, from the election of the legislator to the final passage of his bills, lies within the range of this research.

At the present time, the Legislators' Association is engaged in a study of legislative personnel. This project is much more elaborate than any which has been undertaken previously, and it is believed that the results will be much more significant. The questions it is attempting to answer are: What kind of individual is chosen to the state legislature in each state? To what extent are our laws being made by novices? The age, the occupation, the party affiliation, and the previous legislative experience of every individual who is now a member of a state legislature are being secured. These characteristics were selected because information on them

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could be secured with reasonable facility and the data thus compiled would be of considerable importance.

The names of all the 7,500 members of state legislatures had already been compiled for the mailing list of the Association—a compilation, incidentally, which is unique in itself. Data on the age, occupation, party affiliation, and previous legislative experience of some 4,500 legislators was available in state blue-books or legislative manuals. But many states have no such documents, and in others, the information given in the manual is incomplete. It was necessary, therefore, to supplement this data by tapping other sources.

Requests for information were sent to state officials and to local newspapers, and although some results were obtained from these sources, there were still gaps in the information. As a last resort, a series of questionnaires was sent to the legislators themselves, and during a period of four months complete information has been secured on 2,200 additional lawmakers. Further efforts are now being made to fill the gaps which remain. When this is done (perhaps by May, 1932), the Association will be able to indicate some of the type characteristics of the *homo legislatus*.

If the initial material is indicative of what may be expected when all the information is in, the conclusions from this material are certain to be interesting, and perhaps even startling. The great importance of this investigation, however, will be in its cumulative effect. It is planned to carry it on from biennium to biennium. In a few years, the direction in which our legislative ship is drifting can be shown.

The facilities of the organization for pursuing these investigations are exceptional. Located at the edge of the University of Chicago campus, it has access to a splendid library of state documents, legislative journals, and session laws. Through the Interstate Legislative Reference Bureau, direct contacts are made with active legislative reference bureaus in twenty states and with state libraries in as many others. In each house of every state legislature there is a council of five members who are actively interested in the work. These men, who are among the most public-spirited members of their respective legislative bodies, have been very generous in assisting the Association in its quest for legislative information. Occasionally, it is desirable to utilize other sources; and clerks of legislative houses, secretaries of state, and attorneys-general have also coöperated cordially in the task of gathering information.

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The British Royal Commission on the Civil Service. Since the day when Queen Victoria gave her reluctant consent to allow her Government to introduce a form of pass examinations as a means of entrance to the public service, there has been at least one grand inquest each generation into the operation of the experiment thus timidly launched. The Playfair Commission (1874-75) looked skeptically upon the system of open competition inaugurated in 1870; the Ridley Commission (1886-90) reflected the growing confidence in merit and in the Upper Division; the MacDonnell Commission (1912-15) faced, without making commitments, the new organized service which had already made itself felt in the Post-Office, and which was destined in the brief era of "new world" psychology after the war to entrench itself firmly in the Whitley councils for the civil service.

This habit of periodical stock-taking of governmental institutions through the device of a specially created commission has been relatively unknown in the United States until recent years, which have been marked by an exceptional growth of *ad hoc* fact-finding commissions, public or semi-public. The child welfare conferences convoked successively by Roosevelt, Wilson, and Hoover indicate that the habit is being formed on this side of the water. It deserves to be cultivated, some critics to the contrary notwithstanding. The records of the long series of English commissions are invaluable landmarks identifying successive stages of institutional and ideological development.

The fifteen years elapsing between the MacDonnell Commission and the Tomlin Commission (1929-31) witnessed more change and greater stress and strain in the public service than probably any similar period in the history of the modern civil service. The war called vast numbers of civil servants to the front, their places being taken by women; the cost of living raised havoc with scales of pay; the returning ex-service men, even before the armistice, raised difficult problems of reëmployment; the program of the Haldane Committee on Reconstruction was eagerly searched by leaders of the rank and file for clues to ways of improving their status and condition.

The lead was found in the Whitley councils. After some hesitation, the government yielded and a period of extreme activity opened up, leading to the reclassification of the service, the acceptance of a sliding scale bonus, the regularization of promotion, the rapid introduction of ex-service men (largely at the expense of women employees), and the introduction (in 1917) of a system of arbitration for pay problems.

These and other innovations marked a new era, the promise of which

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was soon blighted by the depression of 1921. A harassed Conservative government abandoned arbitration for a time, and all along the line found difficulty in meeting the claims of an organized service, now on many issues a solid unit operating through the Whitley Council. The general strike of 1926 in a way climaxed five years of storm and strife; although the civil service took no overt action, the sympathies of the lower grades were clear. Clause 5 of the Trade Disputes and Trade Union Act of 1927, forbidding the affiliation of civil servants to political parties and outside unions, was the response of a Conservative majority in the House of Commons.

This is the background of the Tomlin Commission, organized in 1929 to report on "the structure and organization of the civil service" and the conditions of service, with special reference to remuneration, machinery for the discussion of questions, the position of ex-service men, and conditions of retirement. Like its predecessors, this was a lay committee broadly representative of the main relevant currents of opinion respecting service issues. Hearings commenced on November 11, 1929; the final report was issued in July, 1931 (Cmd. 3909).

Speaking generally, the report is conservative in its recommendations, finding the basic service organization adequate and satisfactory, and confining its recommendations to relatively minor modifications of practice. The civil service, which had hoped for a strong lead, greeted the report with scant courtesy. The staff side of the national Whitley Council condemned the report for "its total inadequacy." The Council of Higher Grade Women Civil Servants called it "a weak and evasive document." *Civil Service Opinion* wrote: "Seldom can there have been a document received with so much disappointment." Several thousand civil servants in mass meeting formally expressed "their profound dissatisfaction." The national press, however, gave the report moderate support. Certainly the times were not auspicious for increasing the burden of civil expenditures, or for ameliorating the status of public employees.

Experience with the Industrial Court has convinced English civil servants that any substantial improvement in their economic status will have to come through pressure on the Treasury and the House of Commons. They naturally, therefore, laid great stress on the pay problem in their evidence before the royal commission. The results were disappointing. The Commission found "that the present general standard of remuneration of civil servants is reasonable in the light of the wage levels now prevailing, and calls for no substantial revision." The Commission also approved the provincial differential in principle, and recommended consolidation of the fluctuating cost-of-living bonus with the base pay. It is of some interest to observe that the Commission recommended consolidated rates of not

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over 40s. a week for about 32,000 employees, and of not over 50s. for about 66,000, from among a total of 265,000 non-industrial civil servants. The Commission declined to adopt the principle of a minimum wage. On the question of equal pay for men and women, opinion was almost evenly divided.

The professional, scientific, and technical officers (specialist officers) failed to secure recognition of their claims, especially the right of direct access to the responsible authority, in lieu of contact through the permanent under-secretary, and wider opportunity for promotion to the higher administrative posts.

The methods of recruitment were found generally satisfactory, and the oral test was endorsed, subject to a reservation about care in selecting members of the examining board. The Commission rejected a plan of promotion through inter-departmental transfers, and disapproved recognition of a right of appeal on promotion to a departmental appeals board. But it recommended publicity of adverse "service ratings" to the employee concerned. The chief innovation proposed by the Commission is the substitution of a contributory pension scheme in place of the present non-contributory retirement allowance. The plan is proposed for new entrants only, prescribes payments running from five to eight per cent of salary, and imposes government liability for any additional sums necessary to guarantee benefits, the fund to be maintained on the cash disbursement basis.

Of greatest interest, perhaps, is the review of the machinery of negotiation between official and staff sides, i.e., the Whitley councils for the civil service. Established in 1919, these bodies had been extremely active in many departments, somnolent in a few, and in one or two had been suspended by reason of insoluble departmental conflicts.

The official testimony laid before Lord Tomlin was to the effect that the national Whitley Council had outlived its usefulness, but that the departmental councils, over seventy in number, were performing a useful function. One group of high administrative officers who had withdrawn from the national council after the general strike urged the formation of a separate Whitley council for the higher grades. The main body of the staff side, however, stood firmly behind the councils and urged no substantial change.

The Commission declined to recommend a special body for the higher grades, and, in general, endorsed the councils as they had been working for the preceding decade. In the same vein, the operation of the arbitration tribunal, the Industrial Court, was found "appropriate." This dashed the hope of many civil servants that the jurisdiction of the court would be extended to include grading, or that a separate tribunal would be

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established. Civil service claims, in fact, now outnumber the industrial cases.

As in the case of earlier commissions on the civil service, valuable contributions have been published. These include (1) the *Minutes of Evidence* (1,596 pages separately printed by the Stationery Office); (2) various appendices to the *Minutes,* including (a) the Introductory Memoranda submitted by the Treasury, and (b) statements submitted by the staff side, national and departmental; (3) the *Report of the Royal Commission on the Civil Service, 1929-1931* (Cmd. 3909); finally, a number of privately printed documents, including especially the *Statement of Case* presented by the Civil Service Clerical Association and the evidence submitted by the Association of Administrative Officers.

In concluding this brief survey of the work of the Commission, it is in point to observe the growing importance of the organized staff as an inventing and initiating body. The credit for the original introduction of the merit system may properly be given to the government of the day, spurred on by Gladstone and a few associates; but certainly many, if not most, recent innovations have come from the staff, acting in collaboration with the permanent heads of departments. The Whitley councils thus appear on the record to have justified their existence, both because they have been a useful pressure agency and because through them the rank and file have found some opportunity to concern themselves with broad issues of administration.

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Civil Service in Soviet Russia. *Before the Revolution.* Peter the Great, among other attempts to westernize Russia, introduced in 1722 a "table of ranks" consisting of fourteen classes of civil officials (*chinovniki*) ranging from mere filing clerks to privy councillors.[1] Advancement in civil service also brought with it advancement in social status, but few persons of plebeian origin could reach the higher ranks. Officials attaining the rank of "actual state councillor" automatically became hereditary nobles. The old nobility resented this "corruption of blood;" but with the growth of the Empire, the nobles alone were not sufficiently numerous to render all the civil service necessary for the administration of the state. The admission of non-nobles into civil service was, however, rigidly restricted, not so much by educational qualifications as by stipulations that sons of officials, military officers, orthodox clergy, merchants of the first class, and members of the learned professions should be given preference. Others were admitted provided they were graduated from middle and

[1] The table of ranks was abolished on December 10, 1917.

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higher educational institutions with honor (gold medal). Jews were in general excluded, exceptions being made in the case of the medical service. Women were excluded up to about ten years before the collapse of the autocracy, and then they were admitted to minor offices only.

The civil officials of noble birth were considered a privileged class, and were promoted more rapidly than their colleagues of low birth. Only in exceptional cases, as a rule, did the latter advance to the higher ranks of service. Those lacking financial means and influence were doomed to stay in the lowest ranks. The revolution of 1905 theoretically ended this discrimination in favor of the nobility and the wealthy, but in reality the old practice continued, the new rule remaining a dead letter. In general, the life of the civil official was circumscribed in every way, and at the least suspicion of harboring of liberal ideas he was dismissed. Every official was his brother's keeper, the superiors watching the behavior, especially political behavior, of their inferiors. No civil servant could enter matrimony without permission of the higher authorities. After thirty-five years of faithful service, the civil officials were pensioned, receiving full pay; after twenty-five years, they could be retired on half pay.

After the overthrow of the autocracy in 1917, a great number of the old civil servants remained in the service of the provisional government. When the Soviets displaced the Kerensky régime, most of the old officials and those who entered the service after the March Revolution left the service, and hence the new authorities were compelled to employ an entirely new and inexperienced personnel without the necessary qualifications. The new government struggled along under this handicap, but gradually succeeded in cleaning out the inefficient and creating a new civil service in accordance with Communist ideas.

Under the Soviets. The Bolsheviks attempted to make the position of civil servants under the Soviet régime different from that in most capitalistic countries by not granting them a privileged status, and by classifying them simply as employees of the state, having the same rights as other persons working for wages. Although to this day there is no special code regulating their status and rights, in recent years it has been found necessary to adopt special rules relating to the employees in governmental institutions and undertakings, whether national, state, or local. It has also been found necessary, from time to time, to divide Soviet civil employees into categories, and accordingly the Council of People's Commissars of the Union, after consultation with the central committees of the various professional unions, decided on a schedule of typical positions which was later accepted by all national, state, and local institutions.

During the period of military communism, the personnel of state employees reached enormous proportions, but with the coming of the new

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economic policy and the necessity of cutting down expenditures, the number of civil servants was considerably reduced. In accordance with a decree issued on July 12, 1921, by the Council of People's Commissars, the personnel as found on June 1 of the same year was to be reduced by fifty per cent. A special commission was appointed to work out a plan for this reorganization, and the following decisions were reached: (1) a mechanical reduction of grades and personnel by the end of 1922; (2) a planned reduction of grades in connection with the reorganization of the bureaus, in which the latter themselves took part. In March, 1924, the special commission was abolished; its work was transferred to the Workman-Peasant Inspection ("Rabkin")[2] and henceforth merged with the work of general improvement of the state apparatus.

The Reorganized Civil Service. On May 1, 1921, the national budget listed 5,674,279 units of civil servants. Six years later, i.e., on January 1, 1927, the budget listed the total number of civil servants in all branches of governmental activity as 2,187,955, or an average of one civil servant for each sixty-seven inhabitants of the U.S.S.R.[3]

The reduction of civil service employees from January 1, 1921, to January 1, 1927, amounted to some 3,500,000 persons. Of the total number listed, 565,428 persons were in the service of state institutions and establishments of the U.S.S.R., while 1,064,126 persons were employed by various units of local government. The purely administrative branch of the central government employed 29,455 civil servants, that is 1.3 per cent of the entire civil service personnel; the educational-cultural work, 655,285 (about 30 per cent); the service of public safety, 142,035 (6.4 per cent); and the postal, telegraph, and telephone and radio services, 94,145 (4.3 per cent).[4]

The investigation of the Workman-Peasant Inspection brought out that the personnel in the administrative branches increased at a sacrifice of such classes of civil service workers as teachers, physicians, agricultural experts, etc. In consequence, the Council of People's Commissars issued a decree on September 20, 1927, making it compulsory for the various financial agencies to reduce the allowance for administrative services for the fiscal years 1927-28 no less than twenty per cent. The dismissal of superfluous civil workers made it possible to inaugurate well defined

[2] The People's Commissariat of Workman-Peasant Inspection, also known from its abbreviation as "Rabkin," or R.K.I. It is an auditing and censoring organ which works in conjunction with the various branches of the Control Commission of the Communist party. For a brief discussion of this unique institution, see Harper, *Civic Training in Soviet Russia*, pp. 126-129.

[3] A. I. Elistratov, *Administrativnoe Pravo*, p. 125 n.

[4] *Sobraniye Uzakonenii*, 1917, No. 3; 1918, No. 15, art. 217; 1921, No. 62, art. 792. A. I. Elistratov. *Administrativnoe Pravo*, pp. 123-125

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groups of civil servants and fix a schedule of salaries for workers in the various categories in the national and local administration. The regulation for the creation of classes of employees and grades of compensation is under the authority of the People's Commissariat of Workman-Peasant ("Rabkin") Inspection of the U.S.S.R. and federated republics, and the appropriate local organs of the "Rabkin" with the coöperation of the appropriate professional unions and interested institutions. The classification of employees in federal institutions is decided on by the appropriate people's commissariat; the classification of civil employees listed in local government budgets is regulated by the Council of People's Commissars (S.N.K.) of the autonomous republics and territorial and provincial executive committees, respectively.[5] Since 1927, an official record has been kept of every civil service employee. Employees have a right to see their personal records, to object to them, and to appeal to higher authorities.[6]

General Qualifications for Civil Service under the Soviets. Men and women are treated alike in the civil service. Although there is no regulation as to age, the general labor code is applied, which forbids employment under the age of sixteen. Foreigners residing in Russia, and belonging to the "toiling" masses, are given the same consideration as citizens of the Soviet Union. Persons disqualified by judicial process are not permitted to enter or stay in the service. Near relatives are not allowed to serve in the same bureau if one member is under the jurisdiction of another. Exceptions are made in subordinate and elective positions.[7]

The holding of office by the same person in several state bureaus at the same time is permitted only with approval of the directors of the respective departments. Filling of office in a state and private institution by the same person is prohibited. Furthermore, holding of several offices in one or more bureaus is forbidden, if the positions or institutions are in administrative or economic dependence. Exceptions are being made in cases of representatives of the government in Soviet administrative and inspection organs, and of stock associations and other coöperatives receiving governmental subsidies. Members of the militia (police) and criminal investigation staffs, inspectors and advisors of the "Rabkin" and other official inspection staffs, inspectors and agents of the Commissariat of

[5] *Sobraniye Uzakonenii,* 1927, No. 59, art. 588; No. 97, art. 647.

[6] *Sobraniye Uzakonenii,* 1926, No. 66, art. 502; No. 77, art. 627.

[7] The following services are exempt from the above rule: the postal-telegraph service (with exception of those employed in the central bureau); teachers, lecturers, librarians in all scientific, educational, and social institutions; artists and musicians in state theatres and studios; physicians in various institutions of the People's Commissariat of Health; agricultural experts, surveyors, entomologists, and various technicians in experimental stations of the Commissariat of Agriculture. *Sobraniye Uzakonenii,* 1924, No. 1, art. 2.

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Finance who perform duties in connection with collection of direct and indirect taxes, public prosecutors and judges, members of judicial collegia, members of prosecuting staffs, and workers in G.P.U. (state political administration) may interchange offices in their respective departments only by special permission of heads of divisions in each particular case.[8]

Persons employed in government service are forbidden to take part, directly or indirectly, in any kind of private trade, enter into contracts for supply and delivery of goods, receive dividends from business enterprises, enter into commercial relationships with state institutions and undertakings, or act as attorneys for third parties in the affairs of the institutions and undertakings in which they are employed.

In order to raise the educational qualification of civil service employees, a decree was passed in 1925 providing for employment of graduates of higher institutions (*vuzy*) of the years 1925-26 in all vacant positions and in those vacated by the dismissal of unqualified employees. Beginning with January 1, 1927, all undertakings and institutions, state, coöperative, public and private, were obliged to employ for definite service graduates of universities, institutes, and technical schools to the number of two and one-half per cent of all employees in government institutions and economic undertakings. Other institutions, such as postal, telegraph, and telephone services, were to employ one and one-fourth per cent of all workers and employees on the pay roll.[9]

The appointment and promotion of employees are regulated in accordance with the provisions of the labor code and various special regulations. In practice, examination commissions have the authority to hire and promote employees. Previous experience of the candidates which may have fitted them for higher offices are investigated by departmental examining commissions.

Discipline, Tenure, and Compensation. In a decree issued on August 28, 1926, by the Council of People's Commissars of R.S.F.S.R., all state institutions were required to take energetic measures to enforce a rigid service discipline and increase the efficiency of employees. For this pur-

[8] Exceptions are made in many cases of scientific, technical, and educational activities such as lecturing by experts, writing for and editing periodicals, medical practice, and accessory service in coöperatives of a given department. Membership in special and permanent commissions of inter-bureau or bureau character may be permitted if in accordance with rules laid down by directors of the respective departments. The participation of experts of other departments in the work of the Gosplan (State Planning Commission) is encouraged. A. I. Elistratov, *Administrativnoe Pravo*, p. 127 n.

[9] *Sobraniye Uzakonenii*, 1926, No. 63, art. 494.

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pose, regulations were passed in regard to the duration of the working day and the time for reporting to work and leaving the office. A definite amount of work was given to each employee for which he was to be personally responsible. The enforcement of discipline was delegated to the directors of the state institutions.

Tenure, compensation, working hours, and social insurance are regulated, as in the case of other wage-earners, by the general stipulations of the labor code. A civil service employee may be ordered for special tasks to a locality other than his usual place of work, for a period not to exceed two months, excepting the time necessary to reach the destination of appointment. The time for this kind of service may be increased for no more than one additional month. Civil servants employed by state and local institutions must be released from their duties by the appropriate authorities of the institutions to which they are attached before being sent to new positions. Civil servants sent to out of the way places may receive additional compensation, expenses, allowances, lump sum subsidies, or bonuses. In order to be entitled to these privileges, the place of appointment must be over one thousand kilometers on the railroad, or five hundred kilometers by other means of transportation, from the original place of residence. The out of the way appointments are divided into two classes: (1) those which are to places difficult to reach from central points and having unfavorable climate or low cultural standards; (2) all other distant appointments. Compensation of the civil servant depends on the character of the station to which he is attached.

Specially qualified employees who have worked in distant places for over three years receive a leave of three months (exclusive of the time spent on the way) every three or five years of service. Their children have the same privileges in entering educational institutions as manual workers' children.[10]

Professors in institutions of higher learning are selected from candidates competing in national qualifying examinations. Professors and instructors are subject to reappointment at certain intervals. The age limit for technical-scientific workers is sixty-five years. They are entitled to a leave of absence of no less than two months every year, and may receive a leave of from three to six months for every three years of service. Professors and instructors having served twenty-five years receive a pension equivalent to full pay. Upon their death, their dependents also receive

[10] The learned professions, service in the militia (police), G.P.U., and military forces are regulated by special decrees. The service in the learned professions is regulated by a decree of January 21, 1924, and positions of instructors in labor faculties by a decree of June 28 of the same year.

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a pension. A consort unable to work (man or wife) receives half pay; all the other members of the family unable to work receive one-fourth pay, but in no case may the sum exceed the entire pension.[11]

As in other branches of Soviet service, the responsible positions are held by party members; yet in spite of this, very soon after its inception the Soviet government had to wage a fight against bureaucratism. It seemed that under the Soviet régime, no less than under Czarist rule, the "Chinovnik" soul came to the top. To combat this tendency to bureaucracy, the control commission of the party, in its network of branches, is frequently holding "purging" (*chistka*) sessions, disciplining and removing party members from responsible positions, and frequently expelling them from party membership. In fairness to the Soviet régime, it must be said that the government, through its control commission, in coöperation with the Workman-Peasant Inspection, is waging a fight against bureaucracy, which is so easily developed in any form of government. In conclusion, it may be said also that this constant vigilance is producing a class of civil workers far superior to that under the old régime.

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Trends in Public Personnel Organization. There are at the present time at least four interrelated trends in the field of public personnel administration. In the first place, emphasis is shifting away from the old evangelism which emphasized the negative aspects of civil service toward placing greater reliance in the perfection of a technique of administration. Secondly, there is increasing dissatisfaction with removal provisions which require a formal hearing with right of counsel before a board independent of the administration. The third phase involves a changed status of the civil service commission: it is to be either abolished entirely or deprived of its administrative duties and confined to quasi-legislative and quasi-judicial activities. The administrative aspects of personnel work are to be placed under a single head responsible to the governor, mayor, or manager. In the fourth place, there is a very distinct feeling that personnel administration is by its very nature intimately associated with the budget process, and, therefore, that its logical place in the administrative structure is in the department of finance.

In the past few months, a number of pronouncements on these matters have emanated from various technical agencies, professional associations, and reform organizations. The National Institute of Public Administra-

[11] Since 1925, common-school teachers, librarians, and other educational workers have received a pension after twenty-five years of service. Those remaining on duty after the specified period receive half the amount of their pension. Upon the death of the pensioner, his dependents are entitled to specified parts of the pension. Generally, teachers' pensions amount to about 240 rubles a year.

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tion has made surveys of the states of Arkansas, Maine, and New Jersey. The Institute for Government Research of the Brookings Institution has surveyed the state government of North Carolina. The Waterbury charter commission, with Griffenhagen and Associates as the technical staff, has published the results of a thorough investigation into the government of that city, together with a proposed charter which is in most respects a model. A joint committee of the Civil Service Assembly and the International City Managers' Association has issued a proposed solution to the personnel problem in council-manager cities. The National Civil Service Reform League has issued two pamphlets containing drafts of civil service laws, one for a city and one for a state. The following paragraphs are concerned primarily with those aspects of these surveys, reports, and drafts which relate to the organization of a public personnel agency, especially with respect to its position in the administrative structure.

The readers of these columns are so familiar with previous efforts to solve problems of personnel organization that only passing comment is necessary. In 1923, a special committee on civil service of the National Municipal League recommended a single civil service commissioner with an indefinite term of office. He was to be appointed by a special committee of three: one selected by the mayor, or manager, one by the superintendent of schools, and one by these two members. The chief executive was to select the commissioner from any of the three highest on a list passing an examination given by this committee.[1] In 1926, the Conference Committee on the Merit System published a report which failed to take a definite stand. Six alternative plans of organization were presented, with statements of the advantages and disadvantages of each. Two of these plans provided for a single commissioner, in one case to be appointed directly by the chief executive, and in the other by competitive examination.[2]

The National Institute of Public Administration's survey of the state of New Jersey proposes a bureau of personnel in the new department of finance. "The proposed bureau should be headed by a director of personnel, whose chief duties would be to recruit employees, maintain an adequate record of their services, and pass on all promotions, demotions, and removals. The existing civil service commission may be retained in connection with this bureau, but it should have no administrative authority with respect to the state service; it should act merely as a board of appeals from the decisions of the director of personnel in cases of demotion or removal."[3] In criticizing the existing set-up, and in justifying the proposed more intimate connection with the department of finance,

[1] 12 *National Municipal Review*, 462 (August, 1923).

[2] *The Merit System in Government*, pp. 70-77.

[3] *Report on a Survey of the Organization and Administration of the State Government of New Jersey*, p. 43.

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the report stated that the "relation between the civil service commission and the officers of government who, in the last analysis, must be responsible for control of state expenditure is too remote. The purchase of personal services is not different essentially from the purchase of commodities and calls for the same type of management, a type of management which a civil service commission is poorly fitted to furnish. Statewide planning and budgetary and treasury control are impossible without recruiting, appointing, and compensating of employees."[4]

Of the other two surveys conducted by the National Institute, that of Arkansas recommended a personnel bureau in the department of finance headed by a director of personnel. There is no mention of a civil service commission.[5] The Maine survey thought it better to place personnel work in the bureau of administration under the governor temporarily. "Its proper place is, however, as a bureau in the finance department, but as complete organization of this department is likely to be delayed for some time, personnel work could probably be carried on much more smoothly now under the governor's direction."[6] Here again there is no mention of a civil service commission. It is thought that in the beginning there might be a combination office of director of budget and personnel. Eventually, however, there should be a director of personnel.

The North Carolina report calls for the abolition of the present salary and wage commission, and the establishment of a bureau of personnel in a proposed Service of General Administration. The bureau would be headed by a director of personnel appointed by the governor on a merit basis. It would be in charge of recruiting, classification, service ratings, promotions, demotions, dismissals, transfers, and retirement for all branches of the state service except educational institutions. The bureau of personnel would be departmentalized in the Service of General Administration alongside such other institutional services as the bureau of the budget, the bureau of accounting and reporting, and the bureau of purchase and contract. No mention is made of a civil service commission; and removals would seemingly be handled by the director of personnel. This is a clear-cut recommendation in favor of the single-headed personnel agency under the control of the administration.[7]

The Waterbury report, prepared under the guidance of Griffenhagen and Associates, contains a complete proposed charter, in addition to much explanatory material. The essence of the recommendation on personnel

[4] *Ibid.*, p. 94.

[5] *Findings and Recommendations of a Survey of the Administrative Structure of the State Government of Arkansas, August, 1930*, pp. 117-123.

[6] *State Administrative Consolidation in Maine*, 1930, p. 34.

[7] *Report of a Survey of the Organization and Administration of the State Government of North Carolina*, p. 118.

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provides for a bureau of budget and personnel in the department of finance, to be under a commissioner appointed by the city manager. This bureau would have an expert staff which would prepare the annual budget, in addition to conducting continuous budget investigations throughout the year. The bureau would be headed by a director of budget and personnel,[8] who would be both budget and personnel officer, as the name implies. He would presumably have under him in a separate division a trained staff in charge of recruiting, classification, the compensation plan, service ratings, personnel records, and all of the other phases now thought to appertain to personnel administration.

The proposed Waterbury charter provides for a citizen advisory board, to be appointed in each department by the city manager if and when he deems advisable. This agency for the department of finance would be known as the board of finance. It is suggested that regulations relative to leaves of absence, hours of duty, promotions, transfers, layoffs, removals, suspensions, and other personnel matters "might well be submitted to the board of finance as a rule-making body for its adoption before being promulgated by the commissioner of finance with the authority of the city manager."[9] It is to be presumed, however, that such action by the board of finance would be entirely advisory, because under the charter its very existence would be subject to the will of the manager. Removal and discipline matters are left entirely in the hands of the manager. The board of finance would be used merely as a fact-finding body.[10]

In 1931, the National Civil Service Reform League issued two drafts of civil service laws, one for states and one for cities. Three alternative types of organization were suggested for states. The first provided for a commission of three members, one to be appointed by the governor to serve during his term of office, and two to be appointed by the governor from an eligible list secured through open competitive examination given by a special examining board appointed by the governor. Two members of this board must have had experience in personnel work, and one must have served for two years as a judge of a court of record. The governor is required to appoint the person or persons at the top of the eligible list. The special examining board ceases to function after an eligible list is prepared. The two commissioners appointed in this manner are a part of the state classified service, and may be removed only after a hearing conducted in the manner described below.[11]

The second alternative plan calls for a single commissioner appointed

[8] *Report of the Waterbury Charter Commission*, 1930, p. 947.

[9] *Ibid.*, p. 703.

[10] At pp. 702-703, there is an excellent presentation of the arguments against taking dismissals out of the hands of the administration.

[11] *Draft of a State Civil Service Law*, secs. I, XII.

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by the governor from the head of an eligible list prepared after open competitive examination by a special board constituted in the manner prescribed above. The governor must appoint the person standing highest on the eligible list, who holds office until removed under the provisions of the act.[12] The third plan sets up the familiar independent commission of three members appointed by the governor with definite overlapping terms.[13] There is a formal mode of removal for commissioners under all three plans. There must be written charges which can be filed by any citizen or taxpayer. These charges must be investigated and determined by the person holding the office of chief justice of the highest court of record of the state "or by some person or board appointed by him for that purpose, and by the state civil service commission, if made against any other commissioner." The wording of the statute contemplates a rather formal hearing, with administration of oaths, compulsory attendance of witnesses, and the production of books and papers.[14] The proposed act sets up the office of personnel director, appointed by the commission; but this position may be combined with that of single commissioner if that type of organization is selected.[15]

The city civil service law provides for two alternative types of organization. The first is a prototype of that which also appears first in the above description of the state law: the mayor to appoint three commissioners, one without restrictions to hold office during his term, and the other two, for indefinite tenure, from the head of an eligible list secured through a competitive examination held by a special examining board. The other alternative is probably most significant in the light of the League's past attitude toward the independence of the personnel agency.[16] A personnel director appointed by the mayor, or other appointing authority, is to head a personnel bureau. Some attempt is made to prescribe qualifications, but they are of such a nature as to make evasion with impunity possible. There is no mention of a civil service commission. The director may be removed by the appointing authority, "for cause upon written charges filed by any citizen, and after a public hearing at which the personnel director shall have an opportunity to be heard in his own defense."[17] This practically means placing the tenure of the personnel director at the mercy of the mayor or manager.

[12] *Ibid.*, sec. I (a).
[13] *Ibid.*, sec. I (b).
[14] *Ibid.*, sec. XII.
[15] *Ibid.*, secs. XIX, XV.
[16] One is compelled to believe that some change of mind has come over the National Civil Service Reform League by reading previous pronouncements of the then secretary, H. W. Marsh, entitled "The Merit System in City Manager Government," in 7 *City Manager Magazine*, 9-11 (Sept., 1925). Formerly it was argued that there should be an independent recruiting agency in manager cities.
[17] *Draft of a City Civil Service Law*, sec. I (b).

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The removal provisions of the proposed law for cities are of interest to those who are familiar with the League's efforts to make political removals difficult. The appointing officer may suspend or dismiss any subordinate by filing written reasons therefor with the commission and giving the dismissed person an opportunity to answer. There need be no hearing, except in the case of removal for political or religious reasons. On the face of it, this would seem to give the appointing officer a great deal of freedom in removals.[18] There is occasion to ponder, on the other hand, whether the clause allowing hearings before the commission where removal is on political or religious grounds is not a wolf in sheep's clothing. Might not commissions that so desired assume jurisdiction in almost any case by declaring it to involve the question of removal for political reasons?

In July, 1929, there was created a joint committee on personnel of the International City Managers' Association and the Civil Service Assembly, Mr. John N. Edy representing the former and Mr. C. N. Amsden of Los Angeles the latter. Its report[19] found that an overwhelming number of those cities responding to a questionnaire place personnel matters directly under the manager. This is in accord with the recommendations of the committee, which, rather than outline detailed suggestions, saw fit to endorse the tentative report of a committee of the National Municipal League. This latter committee has as yet reached no decision,[20] but its secretary, Mr. Fred Telford has made public a paper[21] stating tentative conclusions. These are endorsed by the committee on which Mr. Edy and Mr. Amsden served, though they are in no sense to be taken as bearing the official approval of the National Municipal League at this time. Personnel administration is to be in the hands of the manager; where the number of employees exceeds one thousand, he is to appoint a personnel director who is "familiar with the science and skilled in the art of personnel administration."[22] Two members of the committee thought that in council-manager cities having a population in excess of 500,000 there should be a commission or board to pass on quasi-legislative matters (such as the final adoption of rules and regulations, classification and compensation plans, and the broadest employment policies) and quasi-judicial matters (such as appeals from removed employees and reports of investigations relating to the operation of the personnel system).[23]

[18] *Ibid.*, sec. XXV.

[19] *City Managers' Yearbook*, 1931, pp. 256-259; 13 *Public Management*, 66-68 (Feb., 1931); 8 *Public Personnel Studies*, 144-146 (Oct.-Nov., 1930).

[20] Letter from Mr. Russell Forbes, dated July 17, 1931.

[21] Fred Telford, "The Organization for Handling Personnel Work," in *City Managers' Yearbook*, 1931, pp. 190-197.

[22] *Ibid.*, p. 195.

[23] *Ibid.*, p. 191.

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What do these findings indicate? In the first place, it can be stated quite definitely that the civil service commission as an administrative agency is falling into disrepute. The North Carolina report goes so far as to abolish the commission entirely. In the New Jersey state survey, it would be retained for quasi-legislative and quasi-judicial purposes only. The Waterbury report would use the board of finance as an advisory body in formulating civil service rules and as a fact-finding body, without the power to render judgment, in removal cases if the city manager or dismissing officer so desired. These reports indicate an unfaltering departure from the old conception that civil service is a sacred and inviolable domain to be shielded from the unclean encroachments of governors, mayors, and city managers. The new personnel administration is to be an integral part of the central administrative machine. During the past ten years, one had heard more or less guarded expressions of this trend.[24] In the state of Maryland, this principle had been recognized in practice for a decade; but these 1930 surveys reveal a brand of confidence on the part of the technicians heretofore hardly so emphatic.

If civil service is to be a part of an integrated administrative machine, how is it to be departmentalized? Without exception, it is to be tied up directly with the budget and finance staffs. This is in direct line with the modern concept of public personnel administration, which places much greater emphasis than formerly on the budgetary aspects of personnel problems.[25] The classification and compensation plans are now acknowledged to be so important that a committee of the Civil Service Assembly recently seriously thought of giving them a heavier weight than examining in rating the importance of the various activities of a personnel agency. The classification and the determination of the rate and manner of compensation for governmental positions are of just as much interest to the budgeteer as to the personnel group. Classification determines the duties of a given position, and a scientific determination of rates of pay can surely not be arrived at unless the duties are known. Indeed, so large a proportion of governmental expenditures are now going for personal services—in the city of Los Angeles as much as eighty per cent, exclusive of debt service[26]—that budgeting cannot be effective unless it is intimately associated with the various phases of the personnel problem.

The proposed Waterbury charter probably acknowledges this relation-

[24] See Telford, "Recent Personnel Legislation," in 24 *Amer. Polit. Sci. Rev.*, 104 (Feb., 1930).

[25] See declaration on this point by the technical section on organization of the Civil Service Assembly of the United States and Canada, in 7 *Public Personnel Studies*, 136-137 (Sept.-Oct., 1929).

[26] See mayor's message, *Proposed Budget, Fiscal Year, 1930-31*, p. 3.

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ship to a greater extent than the other reports. There, a bureau of budget and personnel is to be set up in the department of finance with a director of budget and personnel, appointed by the commissioner of finance, in charge. This proposal exemplifies the most complete union that has as yet come to the attention of the present writer.

While the processes of recruitment and examination are still considered vital parts of the personnel process, it can be said definitely that the day is over when any type of examination, so long as it be free from political influence, is considered a cure-all for every personnel abuse. Other aspects are now considered to be almost, if not quite, as important as examination: classification and compensation, service ratings, regulation of leaves and absences, promotion, discipline, and discharge. In fact, many of the more progressive personnel administrators came to the point of losing confidence in the selectivity of their examinations. The Bureau of Public Personnel Administration (presumably Fred Telford speaking editorially) went so far as to state that the best type of new short answer test was only fifty per cent selective, and that selection by the old free answer method was little better than guess.[27] While this realization has led to experimentation which has in the last five years materially improved the type of tests used by the best agencies, it has also impressed the personnel group that other phases of their work are of vital importance. The reader should not infer that civil service examinations are futile. New testing processes are unquestionably bringing higher types into the public service. Reference is made here to the recent lack of confidence in the tests as the alpha and omega of personnel administration merely to give one reason for the increasing emphasis on its budgetary aspects.

The final deduction from the surveys under consideration indicates impeachment of legal provisions making removal difficult. It is unquestionably coming to be felt that tenure must come through a tradition established by public demand. Furthermore, it is increasingly felt that forcing high standards for entrance will take the incentive out of spoils and largely avert the necessity for removals. There is also a growing opinion that in those communities where civil service is an accepted institution, the danger from spoils constitutes one of the lesser hazards of public personnel administration. Of far greater concern should be faulty classification and compensation plans, smug satisfaction with the adequacy of shopworn means of testing, and general complacency relative to loose methods of administration. These conditions may exist without spoils influence; and they are thought by many to constitute the real enemies to civil service.

[27] 6 *Public Personnel Studies*, 57 (March, 1928).

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Many friends of the civil service movement will shudder at the thought of placing all personnel matters directly under the mayor, governor, or city manager. In reply, the proponents of the new movement would say that political influences have on countless occasions nullified the merit system under the old civil service institutions, in spite of all legal safeguards. They furthermore declare that civil service officers will be no more at the mercy of politics than under the old arrangements. On the other hand, they may be able to gain the confidence of governors or mayors by working with them instead of—in the eyes of the mayor or governor—at cross purposes. One of the favorite ways of nullifying civil service laws in the past was by starving the personnel agency financially. It is thought that more adequate support will result from connection with the chief executive's budget agency.[28]

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[28] A letter, dated July 31, 1931, from Mr. C. N. Amsden, general manager of the Los Angeles city civil service commission, states that wherever the personnel agency has been placed directly under the mayor, governor, or city manager it "has been given far more authority and real power than it ever had before." In the state of California, the change resulted in an increase of the budget for personnel work from approximately $50,000 to $75,000 a year.

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The British General Election of 1931. The main feature of the *coup* which the most principled, if not the most typical, British newspaper has called "the shortest, strangest, and most fraudulent election campaign of our time"[1] are well known. Recapitulation has its uses, however, even if lack of space, not to mention more fatal inadequacies, must confine it to the narrowest of backgrounds and to statistics that lie near the surface of politics.

At the time when the second minority Labor government came to an end on August 23, 1931,[2] socialism in Great Britain, so far as it was in practical motion, was still operating outside the economic organization of the country, the inadequacies of which it was seeking to offset and to supplement by social services based largely on taxation. He would be rash who should pronounce the policy a failure. Anyone who has recently observed, even in a superficial way, the conditions of life in regions such as the stagnant coal-exporting area in South Wales cannot help thinking how much worse the human consequences might have been. That the policy has limits is probable, although no one knows just where these limits would be found if there were the will to push taxation as far as it might go. Certainly the difficulties of operating from the outside of the complex called business were very great. Economic institutions, like some neurotic children, are able to threaten in good faith that they will be very ill if their wishes are thwarted. The critic must be fair. No country has more grounds than Britain, exporter of goods and of capi-

[1] *Manchester Guardian,* October 28, 1931, in an editorial that said: "What prospects are left of anything but the triumph of a bleak, harsh reaction? The mischief cannot be undone. The electorate has been swept away by panic and fear. By the side of the scare about the pound, the cry 'Hang the Kaiser' and the Red Letter appear almost respectable. . . . Even if we ignore the fact that the election was entirely unnecessary and was forced on by the Conservatives for their own ends, there was not the slightest justification in reason for interpreting it as the last struggle for civilization."

[2] For the background, see (with the deference due, but with allowance for its understandable bitterness) a review by Sidney Webb (Lord Passfield), "What Happened in 1931: a Record," in 3 *Political Quarterly,* 1-17 (January-March, 1932), in which it is said: "The session of 1931 opened with the Parliamentary Labour party seriously discontented with itself, the several ministers out of touch with one another, struggling separately with their departmental difficulties, the cabinet unable to find solutions for problems in the circumstances actually insoluble, and the backbenchers at loggerheads with themselves and with the front bench. The Prime Minister—very much aware of the shortcomings of each one of his colleagues, and of the party to which be belonged, as well as (may it be said?) perhaps incessantly rather too conscious of his own superiority—was not in a condition to withstand the temptation of flattering suggestions that began to be made from more than one quarter."

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tal, to know and to fear the confusion of a world which has become terribly interdependent without becoming integrated. When the banking community (echoing the economy committee) said one thing and the Trades Union Congress said another, Ramsay MacDonald, Philip Snowden, and J. H. Thomas, with a dozen other Labor members in the House, chose what they regarded as the harder course and what they purported to consider a temporary policy of surrender in collaboration. On August 24, Mr. MacDonald informed his former colleagues that as head of a new National Government he had already undertaken to form a cabinet of all the parties. History must answer later how far one of the imponderables of the British constitution influenced this situation. Rumor has it that the king, instead of insisting that Mr. Baldwin try his hand, appealed to Mr. MacDonald on the ground, especially, that his prestige in the United States was indispensable, and so invoked successfully the messianic delusions which are never far off in many kinds of greatness.

Even then there was no overt sign of an early election. Parliament reconvened on September 8. The new Government secured a majority of 59 in the first division; a supplementary finance bill was passed without difficulty. On September 20, the gold standard was suspended. The irony of this step was deepened by the fact that, far from causing the heavens to fall, it was reflected in the revival of certain phases of the export trade. On October 6, the prime minister announced that the king had consented to an immediate dissolution. How far the prime minister originated this move, or was subtly forced into it by the Conservative contingent, is uncertain,[3] and judgments regarding Mr. MacDonald's astuteness and force may well be postponed until more is known of his exact understandings with the king and others at the time of dissolution, just as the final test of the sincerity of his continued dedication of himself to Labor must be read in the resistance he may show in future dealings with his new allies.

In the manifesto in which he went to the country, the prime minister sought to justify the election in these terms: "In August, the combination had to be improvised hurriedly both as regards the Government and its supporting parties and groups in Parliament. Now, with these prospects before us and so many world indications of uncertainty still threatening, it is essential that the nation's support of Government policy is

[3] The *Manchester Guardian*, in its leader on election day, October 27, said: "It is perhaps easier to see what the election is about if we look at its origins. We are told now by Mr. Baldwin and most of the soberer Tory elements that it is not primarily about tariffs. But historically there is no doubt that it is. It was tariff enthusiasm alone which set going the movement within the Tory camp to force an immediate general election."

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placed beyond the shadow of a doubt." The election, he added, was "necessary to demonstrate to the whole world the determination of the British people to stand by each other in times of national difficulty." Thus was unanimity, with an eye to distant spectators, made essential in an election invoked in the name of "parliamentary institutions." So far as proposals went, the prime minister said: "As it is now impossible to foresee in the changing conditions of today what may arise, no one can set out a programme of detail on which specific pledges can be given. The Government must therefore be free to consider every proposal likely to help, such as tariffs, expansion of exports and contraction of imports, commercial treaties, and mutual economic arrangements with the Dominions." Thus was the "free hand" requested.

The question of reservations in the appeal for a "free hand" divided the Liberals into three groups. The cleavage roughly coincided with rifts already manifest in regard to coöperation with Labor. In the old Parliament, Sir John Simon (now secretary of state for foreign affairs) had resigned from the Liberal Parliamentary party in protest against the policy that had made possible the existence of two Labor governments. For purposes of the election, Sir John improvised a Liberal National Organization; 41 candidates (Simonites) were offered on the basis of unconditional support of the National Government, and of these 35 were elected. During the illness of Mr. Lloyd George, the Liberal leader had been Sir Herbert Samuel, home secretary in the National Government both before and after the election. He exemplified a more cautious kind of support. It may be remarked that in his own constituency he did not escape having a Conservative opponent who pressed him hard in a triangular contest; nor was this the only instance where the spirit of coöperation was strained.[4] Using the regular Liberal organization, 112 candidates (Samuelites) were advanced, of whom 33 were successful. Mr. Lloyd George, from a sick bed, expressed the view that the election was unnecessary and dangerous, and that "the 'open mind' is an open trap." On the eve of the poll, he virtually urged the Liberals to vote Labor, saying: "In every constituency where Liberals are so fortunate as to have a Liberal candidate who is standing as an uncompromising free trader, I hope they will do their utmost to secure him every possible vote, but in all other cases I would urge them to vote for the free trade candidate whatever his party label." Seven candidates appeared as Independent Liberals, and of these four were returned—Lloyd George himself, his

[4] See below, p. 337. Note also, for example, the following from an editorial in the *Evening Standard* (part of the Beaverbrook press) on October 22: "Sir Herbert Samuel's last despairing efforts at Darwen may be taken as epitomizing the last despairing efforts of the opposition to the rising tide of Empire Free Trade."

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son, a daughter, and his son-in-law. In the circumstances, naturally, Labor did what it could to profit by Liberal anxieties and scruples regarding free trade, although Labor's leaders had wavered; at least on the possible use of a revenue tariff during the emergency, and although Labor's theoretical position was hardly one of *laissez faire* and it might well argue that free trade without control would not leave the world much less ugly than before.[5]

It had been evident that the Liberal element, whether destined to eventual disappearance or not, constituted the balance of power. The vote cast for Liberal candidates in 1922 amounted to 29.2 per cent of the total vote; in the following year, it was 29.6 per cent. In 1924, when frightened, the Liberal vote fell to 17.6 per cent; as a result, although Labor's percentage of the total advanced from 30.5 to 33, the Conservative share of the whole vote leaped from 38.1 to 48.4 per cent. In 1929, there were three-cornered fights in an unusually large number of constituencies—451.[6] Even in these, however, Liberal disintegration proceeded, and Labor thus profited not only by the division of the other classes but also by the acquisition of Liberal support. This was indicated by the fact that 88 of the 202 seats won by Labor in three-cornered contests with Conservatives and Liberals were won by outright majorities, whereas the Conservatives secured only 60 such seats by majorities and as many as 148 (to Labor's 114) by pluralities.

Fear, resurgent, was dominant in the election of 1931. An unusual effort was made to avoid the risk of triangular electioneering. These tactics were chiefly reflected in the curtailment of Liberal candidacies—from 570 in 1929 to 167, including seven Independent (opposition) Liberals, while the Conservative nominees declined only from 590 to 520 and Labor, which had put forward 515 candidates in 1929, had 513 in 1931. As a result, only 55 constituencies were fought simultaneously by

[5] In an editorial on November 23, the *Daily Herald* (Labor) remarked: "Labour has never been a rigidly doctrinaire Free Trade body of opinion. Its policy of imports boards shows clearly its understanding that foreign trade must be dealt with on an organized basis." During the campaign, some attempts were made to advance the idea of import boards as a formula that might assuage two sources of anxiety at once. More typical, however, was a poster (noted at Oldham, Lancashire): "Workers, beware. The Tories want to cut your wages by food taxes. Vote Labour and defend your wages." Much was made of the depression in the United States. "A city of death," read a dodger, referring to conditions in Detroit; "What happens in tariff-ridden America. . . . Prevent Birmingham from becoming a city of death by voting Labour."

[6] In these 451 constituencies, the Liberals (who won in only 41, 39 being plurality victories) were last in 248, second in 162. Where Labor won by a plurality, Liberals were second in only 17 instances, third in 99; whereas where Conservatives were elected by plurality vote, Liberals were second in 79 instances, third in 68.

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the Liberal, Conservative, and Labor parties,[7] of which 49 were captured by Conservatives, five by Liberals, and one by Labor.[8] Such was the smiling face of coöperation and forbearance among the friends of the National Government! It is beside the point to seek to place the blame for certain irregularities and reprisals that attended the necessarily decentralized execution of the plan. Sir Herbert Samuel, it has been pointed out, encountered Conservative as well as Labor opposition in his own district, as did another Liberal member of the National Government, Sir Donald MacLean, president of the board of education. In four instances, sitting Liberals (two of whom were minor members of the Government) were actually supplanted by Conservatives in triangular contests.[9]

The plan of electing a government by patriotism and pact could not wholly disregard the rump called National Labor. Twenty candidates stood in its name, although three virtually withdrew before the poll. Fourteen (of whom ten were sitting members who had followed the prime minister) were allowed a clear field in opposing the Labor nominees, in which they were uniformly successful. In five other instances, however, Conservative candidates also took the field and were elected. One such

[7] This calculation, it should be noted, disregards the Independent Liberals and also the candidates of minor parties (Communist and New Party) and independents. Altogether, there were in 1931 at least 112 constituencies in which more than two candidates appeared for each seat. This total may be compared with analogous figures for elections in recent years—1918, 234; 1922, 233; 1923, 253; 1924, 225; 1929, 470 (given in Pamphlet No. 66, 2nd edition, September, 1929, a publication of the Proportional Representation Society).

[8] In 19 of the 55 cases, the successful candidate was elected by a minority. Considering also constituencies in which the conflict was rendered multi-lateral by the presence of minor parties and independents, 33 seats in 1931 were won by less than a majority: 21 by Conservatives, six by Liberals, four by Labor, and one by an independent.

[9] In addition, the parliamentary secretary to the ministry of health in the National Government, Mr. E. D. Simon, was defeated in a district in Cornwall previously held by a Liberal (paymaster in the National Government) who did not run again. It is fair to add that, of the 55 districts in question, 28 had been held by Conservatives, of whom 25 were standing for reëlection. In 28 other constituencies, Liberals and Conservatives were involved in dual combat; Conservatives took 26 of these. The other two were won by Independent Liberals. In 1929, moreover, there had been triangular contests, with Labor involved, in 24 of the 28 constituencies. These facts suggest the relative inability of Liberals, even in the absence of Labor competition, to profit by the drift of 1931. In 46 other districts (29 of which had been held by Labor, the others by Liberals of one stripe or another), Liberals and Labor were alone engaged in 1931, Liberals winning in 38 cases. In addition, there were nine constituencies (four of which had been held by Labor) in which the Liberal prerogative of opposing Labor was invaded only by minor parties or independents, and in all but one Liberals (including one Independent Liberal) were elected.

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case involved the discomfiture of a National Labor member who was standing for reëlection. In Philip Snowden's old district, following his withdrawal, the attempt to clear the way for a National Labor candidate was frustrated by the local Conservative association. In the end, with Snowden's aid, the Liberal was elected.

The extensive, though erratic, practice of pre-election agreements and combinations, followed by a 56.4 per cent fall in the vote cast as Liberal, a rise of 37.7 per cent in that recorded as Conservative,[10] while Labor's strength sagged 20.8 per cent, resulted in the grotesque overturn indicated in the following summary of changes in parliamentary representation:

	Labor	*National Labor*	*Conservative*	*Liberal*	*Independent Liberal*	*Independent*
After 1929 election	287	—	260	60	—	8
Before dissolution	265	15	263	58	—	14
After 1931 election	52	13	473*	68	4	5

* Including two who stood as "National."

The extent of the disproportions in representation can be measured by noting the fluctuations in the popular votes of the parties in recent elections, with the percentage each constituted of the total:

Year	*Total vote cast*	*Number unopposed returns*	*Conservative*		*Liberal*		*Labor*		*Others*
1922	14,393,632	57	5,500,382	38.2	4,189,527	29.2	4,241,383	29.4	462,340
1923	14,548,521	50	5,538,824	38.1	4,311,147	29.6	4,438,508	30.5	260,042
1924	16,640,279	32	8,039,598	48.3	2,928,747	17.6	5,489,077	33.0	112,857
1929	22,648,375	7	8,656,473	38.2	5,308,510	23.6	8,389,512	36.9	293,880
1931	21,659,404	67	11,926,537	55.1	2,320,310[1]	10.7	6,648,023	30.6	764,534[2]

[1] Includes 106,106 votes for Independent Liberals.

[2] Includes 343,353 votes for National Labor, 55,309 for National, 36,377 for New Party, 74,824 for Communists, and 254,671 for Independents.

Labor, which received 30.6 per cent of the total vote cast, secured 8.4 per cent of the contested seats, at the rate of one for 144,000 votes, whereas

[10] It must be remembered that 67 seats were uncontested, and that of these, 61 were Conservative, 6 Labor. This fact explains the decline of the total vote cast, which amounted to 73.5 per cent of the electorate, whereas in 1929, with 7 uncontested seats, it had been 78.5 per cent; in 1924, with 32 uncontested returns, 76.5 per cent; in 1923, with 50 uncontested, 67 per cent; in 1922, with 57 uncontested, 67.2 per cent. The booklet issued by the *London Times, The House of Commons, 1931*, p. 140, estimated that (with allowances for the uncast votes in uncontested constituencies) the total vote for candidates supporting the National Government might be regarded as 16,687,701, the combined opposition vote (Labor, Independent Liberal, Communist, and New Party) 7,676,638—in all 81.4 per cent of an electorate of 29,487,711.

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the Government groups gathered theirs at a cost of 29,000 votes per seat. It is no answer save to those to whom irony is its own excuse for being to say that in 1929 Labor garnered its seats at the rate of one to 29,000 votes, while the Conservatives expended 34,000 and the Liberals 90,000 for every member elected. One wonders whether Labor's opposition to proportional representation will change.[11] The secretary of the Proportional Representation Society remarks: "The Labor Government proposed the alternative vote. Its bill did not pass; yet, in this election, the alternative vote was, in essence, in force. . . . A combination of two parties, such as is possible under the alternative vote, inflicted a staggering defeat upon the third party."[12] The observer is aware that back of the case against proportional representation is a mightier issue—the problem of positive government, suitable for tasks that call for vigor and firmness beyond the dreams of traditional liberalism. At the same time, with recent events to think on, he must doubt whether much that is constructively positive is likely to result from electoral waves swelled by temporary moods behind which there is little conviction, washing out each other's ripple-marks in futile alternation.

The decline of Labor's popular vote was not universal. In 66 districts, it was greater absolutely than in the preceding election. These constituencies were of two kinds as regards Labor's inherent strength. As many as 23 of them had gone to Labor in 1929; seven were carried by it again. On the other hand, 38 were districts in which Labor had stood at the bottom in the preceding election. It happened that in 1929 three-cornered contests took place in all the 66 districts in question. In 1931, the Liberals withheld candidates in no less than 45 of these constituencies,

[11] A reconsideration of electoral methods was a price of Liberal coöperation after 1929. The conference on electoral reform, of which Viscount Ullswater was chairman, dividing on party lines, 13 to 8, with Labor in the negative, recommended that "any change in the present system of parliamentary elections should include the adoption of proportional representation with the single transferable vote." See Command Paper 3636, 1930. In the face of Labor's continued disapproval, the scheme of the alternative vote was offered instead and accepted by Liberal spokesmen. A bill that embodied it, among other features, was read for the second time in February, 1931, passed third reading on June 2, 278 to 228, was mutilated in the House of Lords, and was inertly pending in the House of Commons at the end of the Parliament.

[12] John H. Humphreys, "A Lesson of the General Election," *Contemporary Review*, no. 792, pp. 705-6, December, 1931. Mr. Humphreys estimates: "Under a proportional system, Mr. MacDonald might well have found his Government supported by 270 Conservatives, 110 Liberals, and some 50 National Labor members, a total of 430 confronting a total Opposition of some 185 members." From the standpoint of leadership, he points out the significance of the fact that, of all the members of the former Labor cabinet, George Lansbury alone survived the chances of a system of single-member districts.

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GEOGRAPHICAL DISTRIBUTION OF LABOR REPRESENTATION, 1918–1931

Sections and counties	*1918*	*1922*	*1923*	*1924*	*1929*	*1931*
NORTHWESTERN						
Lancashire	14	18	23	18	39	5
Cheshire	—	1	2	—	4	—
Cumberland	1	3	3	1	3	1
Total	15	22	28	19	46	6
NORTHEASTERN						
Durham	4	11	10	10	17	2
Northumberland	1	6	4	6	5	—
Yorkshire	6	21	23	24	39	7
Total	11	38	37	40	61	9
MIDLANDS						
Derby	1	4	5	4	8	1
Leicester	—	1	2	1	3	—
Northants	1	—	3	1	4	—
Notts	3	2	3	3	5	2
Salop	—	—	1	—	1	—
Staffs	6	9	9	10	14	1
Warwick	—	—	1	1	8	—
Worcester	—	—	—	—	2	—
Total	11	16	24	20	45	4
EASTERN						
Lincoln	1	1	—	1	2	—
Norfolk	—	1	4	1	3	—
Suffolk	—	—	1	—	—	—
Total	1	2	5	2	5	—
LONDON AND HOME COUNTIES						
London	2	9	22	20	36	5
Essex	1	5	10	4	12	4
Middlesex	—	2	6	3	6	—
Berks	—	—	1	—	1	—
Hants	—	—	—	—	3	—
Kent	—	—	2	—	2	—
Total	3	16	41	27	60	9
WESTERN						
Gloucester	1	1	3	2	5	1
Somerset	—	—	1	—	1	—
Wilts	—	—	—	—	1	—
Devon	—	—	—	—	1	—
Cornwall	—	—	—	—	—	—
Total	1	1	4	2	8	1

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SCOTLAND	6	29	34	26	37	7
WALES	9	18	19	16	25	16
Total	15	47	53	42	62	23
Grand total	57	142	192	152	287	52

affording a measure of evidence for the reasonable assumption that, in the absence of a Liberal, a portion of the Liberal vote did trickle to Labor. But it must be added that the Labor vote increased in absolute terms in 14 districts in which the Conservatives withheld candidates, as well as in five fought by three parties in both elections.

The geographical distribution of Labor's representation over a period of years is summarized in the foregoing table. Striking, indeed, was the deflation in 1931 in London and the Home Counties. In London alone, it fell from 36 seats in 1929 to five. Even more striking were aspects of the decline of representation in the Black Country and the industrial North.[13] Warwick, including Birmingham, yielded eight Labor members in 1929, none in 1931; Stafford, next to it, dropped from 14 to one. Lancashire, with the mills of Manchester and its smoky neighbors, slid from 39 to five. Yorkshire, embracing Sheffield and Leeds as well as mining areas, slumped from 39 to seven. Scotland's Labor representation, having climbed to 37 in 1929, was reduced to seven. Where need is, fear is most chilling; in the mood of the industrial population, moreover, there seemed to be a kind of sickly hope that prompted it to grasp for any easy remedy. In contrast to the regions just noted was Wales, where the Labor phalanx was cut only from 25 to 16. The dark-seamed, depressed, disciplined valleys like the Rhondda, Taff Vale, and Ebbw stood firm. Labor was returned unopposed in some cases; only Communists arose to challenge its candidates in others.

In view of the extent to which Labor's anxieties prior to the summer crisis of 1931 had concerned the restlessness of its own extreme elements, irked by "gradualism," the rôle of the left wing, both Labor and Communist, deserves a degree of attention which space forbids. A few bare facts must suffice. Within what is broadly called Labor, the rift between the Independent party and the Parliamentary party was continued, if not actually deepened, by the election. In a Glasgow constituency, the obstreperous Mr. McGovern, who had been suspended in the late Parliament, was unsuccessfully opposed for reëlection by a regular Labor candidate. In four other districts where I.L.P. candidates were

[13] It has already been suggested that almost sardonic humor could be found in the probability that the reputed partial trade revival, stirring the optimism of some important industrial areas, was due in part to the fall of sterling and the appearance of a pound more suited to exporting manufacturers than to rentiers.

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standing, official endorsement was withheld. So, too, was recognition after the election. James Maxton became the leader of a second opposition, five members strong. The Communist party presented 26 candidates, one more than in 1929; but all save five forfeited their deposits.[14] The total vote was 74,824.[15] In five districts, the Communist vote was large enough, if it had been cast solidly for the Labor candidate, to have elected him. The writer of these paragraphs—deeply impressed by the good nature and the respect for the rules of the game that mark the British electorate, for of disorder it happened that he saw none at all while observing the close of the campaign in several parts of England—finds his mind returning to the possible significance of the remark of a young Labor canvasser in the Midlands, whose comment on the Communists was that at bottom of course he believed as they did, but that he didn't like the way they did things. But the observer remembers as vividly the blind, diseased old woman in a narrow street in Ancoats, Manchester, who cried "God bless him, God bless him" whenever the Conservative candidate's name was mentioned by the earnest young Labor nominee whose audience (true, it was Sunday morning) consisted of a few casual loungers at the neat, dark doorways. She, too, was a symbol.

The immediate effect of Labor's recession has been to move the center of gravity of its parliamentary membership further into the official circles of trade unionism.[16] What has been said about the outstanding importance of Wales in Labor's remnant of representation is only another way

[14] Two of these five candidates were in the Rhondda, where Communists were the sole opponents of Labor, receiving 10,359 to Labor's 22,086 and 4,296 to Labor's 23,024; two were in Scotland, at Greenock and Fife West; and one was in Bethnal Green, London. Since the election, the Communist party has claimed a growth in its membership, which in the spring was 2,711.

[15] The size of the Communist vote may be used, incidentally, to put in proper proportions the effort of Sir Oswald Mosley's New Party, preaching "action" and the "corporate state," which, with 24 candidates (22 of whom forfeited their deposits), polled a total vote of 36,377. The glamorous Sir Oswald, with a reputed body-guard, was provocative as well as persuasive, and was arraigned and exonerated on charges of disturbing the peace in Birmingham. His standard-bearer in Whitechapel, London, Mr. T. ("Kid") Lewis, formerly world's middleweight champion, received only 154 votes where the Communist candidate polled 2,658.

[16] Regarding the personnel of the new House of Commons as a whole, the *New Statesman and Nation* of November 7, 1931, vol. 2, no. 37 (new series), p. 563, presents some statistics prepared by Harold J. Laski, listing the following occupations among the members: rentiers, 165 (of whom 150 are Conservatives); business men, 111 (of whom 73 are Conservatives); lawyers, 136 (of whom 111 are Conservatives); bankers and financiers, 47 (44 being Conservatives); soldiers and sailors, 43; farmer-landowners, 15; journalists, 15; doctors, 14; teachers, 11; accountants, 8; brewers, 5; retired civil servants, 5; trade unionists, 32; others, 8. "By 'rentier' is meant a person who lives on inherited wealth and follows no occupation."

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of expressing this fact. Of the 52 Labor members in the new Parliament, 32 were trade union nominees, of whom 23 were sponsored by the Miners' Federation. To note this natural outcome of the circumstances of the election—to note further some recent declarations by leaders in the Trades Union Congress that Labor's parliamentary spokesmen must not be allowed to grow away from the industrial wing of the movement as did men like Mr. MacDonald[17]—is to raise, and in no way to answer, one of the most fundamental questions regarding the appropriate emphasis in Labor's future appeal.

This is not the place to argue the issue of "T.U.C. dictation" that had so prominent a place in the National propaganda. During the campaign, the secretary of the Trades Union Congress produced documentary proof that the general council of the latter was consulted regarding the economy measures on the initiative of the cabinet, not on its own; but this did not dispose of the fact that the attitude of the T.U.C. undoubtedly influenced the members of the Labor government who declined to follow Mr. MacDonald. Whether the scale of values of the T.U.C. or of the spokesmen of other economic interests should have been accepted depended, after all, on those considerations that lie deeper than any articulate major premise. The T.U.C. and the Labor party are thought by some, who include sympathetic critics, to have stressed unduly opposition to the cut in unemployment insurance. It should be remembered that their position was based not only on the argument that the unemployed were those least able to sacrifice, but also on the proposition that an adequate unemployment scale served to peg the general wage level against a threatened attack.

The slogan of "The Nation versus a Soviet" was a mild sample of the extraordinary outcry in which the daily press, with few exceptions, obliterated whatever distinctions may have existed between editorial and news columns. The front page of the *Sunday Chronicle* of October 25 carried the exhortation: "Vote for Britain Tuesday. The Premier's lash for the shirkers. Socialist policy no use in the crisis," with a picture of Mr. MacDonald done over in a Kitchener recruiting pose. On the front page of the *Daily Mirror* of October 26 were photographs of terribly emaciated children "taken in the Volga area of Russia in 1922" (and all in the act of being fed), under the caption, "Bolshevism run mad."

[17] In a post-election statement, Philip Snowden perhaps expressed the extreme of the other point of view when he said: "This is not the end of the Labor party. It will rise again, but only with new leaders who have vision and courage. But it must be based on a citizen's and not a class outlook." *London Times*, October 29, 1931. It may be added, at the risk of irrelevance, that only one member of the Coöperative movement was elected, whereas nine sat among the Labor members in the last Parliament.

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(the phrase being Philip Snowden's),[18] with a box in the corner containing the advice: "Vote for National Government and enable Mr. MacDonald to stabilize the pound, balance our trade, ease war debt burden," fortified by an editorial ending with "A vote for socialism is a vote for bankruptcy, despair, and ruination." But these, it may be said, were picture papers. Take then, almost at random, counsel offered in successive headlines over news columns in the *Birmingham Post* on election day: "The Mad Folly of Socialism," "Deciding the Nation's Fate," "Vote Early for Country." Or, across an entire news page of the *Daily Mail* of October 26, "Socialist Threat to Savings of the Poor," referring to the carefully timed alarm regarding the not new practice of loaning postal deposits to the unemployment fund.[19] On the same day, the *Daily Express,* with persuasively contrasting pictures, offered the alternative of "Prosperity or Ruination." Simultaneously, in a big box on the editorial page of the *Morning Post,* Alfred Noyes discussed "The Choice" in verse, closing with the words: "Now,—with a world to win, a world to lose—Wild chaos, or a world-wide Empire?—choose!" Needless to say, the bishop of London did not go unnoticed when in the quiet of the Diocesan Conference on October 26 he said: "If the verdict of the country went wrong on Tuesday, the pound would fall to 5s. within 24 hours, to a shilling possibly within a week, and a penny in a month." In retrospect, the wonder is less that Labor's parliamentary losses were so devastating, exceeding all anticipations, and more that in a defensive action on a disadvantageous field it managed to hold its lines at all and to preserve the body of its army.[20]

[18] In his broadcasted address on October 17, in which a sick man into whom the iron had entered to a degree that seemed pathological said: "I hope you have read the election programme of the Labor party. It is the most fantastic and impracticable ever put before the electors. . . . This is not socialism. It is bolshevism run mad." Speaking of broadcasting, the policy of equality amounted to treating each element in the National combination as a party (with an extra speech each for Mr. MacDonald and Mr. Baldwin), confining Labor to three speeches.

[19] Sidney Webb, in the article cited in an earlier note, remarks: "In Great Britain, in 1931, for the first time, the women are considered to have voted differently from the men, and to have contributed to the National Government majority in a much greater percentage than the men. A combination of patriotism and apprehension as to the safety of their little hoards of savings certainly sent an unusual proportion of women electors to the poll, many of them for the first time."

[20] In view of the importance to Labor of the coöperation of local councilors in aiding the parliamentary candidacies (a feature of Labor organization that impresses any observer), as well as the rôle of local governments in carrying out any central program, it was unfortunate from Labor's standpoint that municipal elections followed so quickly, on November 1 in England and Wales and on November 3 in Scotland. On the primary issue of economy, incarnadined by the after-glare of the general election, Labor dropped 203 seats in the councils of the London boroughs, los-

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That army, discomfited, a little bewildered, hardly dismayed, is already reforming. But it takes up arms in a society which, by reason of its very genius for indirection and adaptation, has preserved without fundamental change institutions and attitudes that bind, benumb, even paralyze. It remains to be seen whether, where no eggs are broken, omelettes can be made. This is not a question that concerns Britain alone and interests merely the student of the Mother of Parliaments. There is no more challenging question in the range of political science.

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British Trade Union Law Since the Trade Disputes and Trade Union Act of 1927. Judging from articles on the subject, American interest in British trade union law has been considerable, but spasmodic. Every important decision or statute affecting the legal status of the British trade unions has been followed by articles on this side of the Atlantic outlining the entire history of the British law of labor combinations and attempting to forecast the outcome of the most recent developments. Between times, the subject has not been discussed and no one has presented the actual results of the heralded developments.

The Trade Disputes and Trade Union Act of 1927[1] is the most recent of these developments noted in this country. The act grew out of the British general strike of 1926, and was represented by its proponents as designed to prevent a recurrence of such a nation-wide strike to coerce the government. The trade unions, however, regarded this measure as "an unscrupulous attempt to destroy the working class movement," and predicted that it would make it "practically impossible for trade unions to take action in any dispute without imperiling trade union

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ing its majority in five of the eight boroughs it had controlled, retaining only Poplar, Bermondsey, and Deptford. In some eighty of the cities and larger boroughs in the provinces, Labor lost 206 seats and gained five. In Scotland, however, it showed a net gain of six. The total vote was down; in London, for example, it was 31.3 per cent of the electorate, the lowest since 1919.

[1] 17 and 18 Geo. V, ch. 22. For contemporary articles on this act published in American periodicals, see Harold J. Laski, "Mr. Baldwin Attacks the Trade Unions," 51 *New Republic*, 63-65 (1927); Ben M. Selekman, "British Industry and the Trade Unions Bill," 51 *New Republic*, 224-227 (1927); Alpheus T. Mason, "The British Trades Disputes Act of 1927," 22 *American Political Science Review*, 143-153 (1928); H. A. Millis, "British Trade Disputes and Trade Union Acts," 36 *Jour. Polit. Econ.*, 305-329 (1928); Lt. Col. F. E. Whitton, "The Trades Union Bill in Great Britain," 9 *Law and Labor*, 235-238 (1927); and "New British Law Affecting Trade Unions," *ibid.*, 275-277. A more recent article dealing with one phase of the legislation is J. H. Macrae-Gibson, "The British Civil Service and the Trade Union Act of 1927," 23 *American Political Science Review*, 922-929 (1929).

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funds and exposing the officers and members of the trade unions to fine and imprisonment."[2]

In its language, the act certainly went beyond merely declaring a general strike to be illegal and, of course, did not (at least in so many words) prohibit trade unions from taking "action in any dispute without imperiling trade union funds." What it did do was to declare any strike or lockout to be illegal which "has any object other than or in addition to the furtherance of a trade dispute within the trade or industry" in which the strikers are engaged, or which is "designed or calculated to coerce the government either directly or by inflicting hardship on the community." A trade dispute was declared to be within the trade or industry when the conditions of labor of all persons involved were determined by the same employer or the same joint industrial council or similar body. No union member was to be penalized for refusal to take part in an illegal strike, and the Attorney-General was authorized to restrain the use of union funds in contravention of the act.

Prior to this act, few strikes were illegal in England. The Trade Disputes Act of 1906[3] conferred complete immunity upon trade unions and their members from both civil and criminal liability for strikes under-

[2] The quotations in this paragraph are from the resolutions which were adopted by the National Conference of Trade Union Executives held shortly after the introduction of the bill. For fuller statements of contemporary trade union criticisms of the bill, the following articles and pamphlets, all of which were published in 1927, may be consulted: *Labour Opens its Attack; Shattering Exposure of the Government's Sinister Proposals,* and Arthur Henderson, Jr., *The Government's Attack on Trade Union Law; An Analysis of the Trades Disputes and the Trade Union Bill,* both published by the Trade Union Defense Committee; W. A. Robson, *The Trade Disputes and Trade Union Bill; Analysis and a Commentary,* published by the Fabian Society; Harold J. Laski and Ernest Benn, *The Trades Disputes and Trade Union Bill,* published by P. S. King; and Ramsay Muir, *Trade Unionism and the Trade Union Bill,* published by Williams and Norgate. Articles written later presenting the same point of view are Arthur Henderson, Jr., "The Trade Disputes and Trade Union Act, 1927," 8 *Labour Magazine,* 157-160 (1929); W. A. Robson, "The Future of Trade Union Law" 1 *Political Quarterly,* 86-103 (1930); and J. W. Bowen, "Civil Service Unions in Trade Disputes Bill," 9 *Labour Magazine,* 494-495 (1931). On the other side, favorable to the 1927 law, little has ever been written. Sir John Simon, *Three Speeches on the General Strike* (London, 1926), is valuable for the background of the legislation, as is E. P. Hewitt, *Trade Unions and the Law; Their History, Present Position, and Suggested Reform* (London, Solicitors' Law Stationery Society, 1927), which was first published as a series of articles in the *Solicitors' Law Journal* in 1926 and 1927. L. B. Ferguson, *The Trades Disputes and Trade Union Act, 1927* (London, 1927), is a purely legal treatise. Jean Signorel, *"De l'illégalité de la grève générale; Commentaire du Trade Disputes and Trade Unions Act, 1927,"* in *Bull. de la Soc. de Sci. Econ. et Sociol., Comité des Travaux Hist. et Sci.,* 1929, 71-124, is an article strongly supporting the legislation.

[3] 6 Edw. VII., ch. 47.

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taken "in furtherance or contemplation of a trades dispute." Whether a particular strike was undertaken "in furtherance or contemplation of a trades dispute" was held to be a question of fact;[4] but when the existence of a trades dispute was established, no inquiry was allowed regarding either the motives of the strikers or the effects of their action. In the Emergency Powers Act of 1920,[5] the government was given broad powers to take whatever measures might be necessary to secure for a community the essentials of life jeopardized by a strike, but participation even in such strikes was expressly declared not to be illegal. If the purpose of a strike was the attainment of some industrial objective, it was legal prior to the 1927 act, even though it involved all of the workingmen of the country and completely paralyzed commerce. The general strike of 1926 was held illegal by a trial court in a decision rendered subsequent to the strike.[6] But, admittedly, the validity of this conclusion depended upon whether this strike was waged from industrial or political motives.

The Trade Disputes and Trade Union Act narrowed the right to strike. Any strike designed to coerce the government was declared illegal, although it might have an industrial as well as a political purpose. Further, this act would appear to have made unlawful any sympathetic strike undertaken in behalf of workmen in another trade or industry. It was this restriction more than any other which alarmed the trade unions; but, strangely, not a single case has arisen since 1927 in which an effort was made to invoke this provision. This has been a period of few strikes, and of fewer sympathetic strikes. All of the trade union leaders interviewed by the writer in the summer of 1931 denied that the Trade Disputes and Trade Union Act had anything to do with this strike record, and asserted that it has made no difference whatsoever in union tactics. Nevertheless, to a man they want the law repealed.[7] While it has not to date been applied in any strike, the union leaders are fearful that it might be invoked in almost any great strike.

Other provisions of the Trade Disputes and Trade Union Act of 1927 were but little less objectionable to the trade unions, and have proved more of a handicap. The section of the Trade Disputes Act of 1906 re-

[4] Conway v. Wade [1909], A.C. 506.

[5] 38 and 39 Vic., ch. 86. In the Trades Disputes and Trade Union Act of 1920, the proviso reserving the right to strike was repealed.

[6] National Sailors' and Firemen's Union v. Reed, 1, ch. 536 (1926).

[7] The author visited nearly all of the principal industrial centers of England in the summer of 1931 as a member of a group of economists studying European economic conditions. He everywhere interviewed trade union and industrial leaders on the practical operation of the Trade Disputes and Trade Union Act, 1927, and much of the material presented in this article was obtained in this manner.

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lating to picketing was amended to prohibit picketing in numbers or manner calculated to intimidate, and specifically forbade the "besetting" of a private home. Whether this has affected the actual conduct of picketing is not clear, but in a few instances pickets have been arrested and fined by local magistrates.

More certainly effective has proved the provision prohibiting civil servants from belonging to any organization whose membership is not confined exclusively to civil servants. This section was designed to compel the various organizations of civil servants to give up their affiliation with the Trades Union Congress, which thereby lost the dues of the 160,000 members of the civil servants' unions. In all other respects, the prohibition against affiliation of the civil servants' unions with the trade union movement appears to have had little effect. These unions have gained members and still are very friendly with the Trades Union Congress and its General Council.

The final major change made by the Trade Disputes and Trade Union Act—that of substituting "contracting in" for "contracting out" in the use of union dues for political purposes—has probably had the greatest effect of all of the measure's provisions, although it, too, has failed to work out precisely as was expected. This was a blow at the Labor party which struck a very vital spot—its main source of financial support. The British trade unions have always financed the majority of the Labor party candidates. In Osborne v. Amalgamated Society of Railway Servants,[8] back in 1910, it was held that unions had no legal authority to spend any of their funds for political purposes. Thereafter, in the Trade Union Act of 1913,[9] such expenditures were legalized, but on the condition that any union member might prevent use of any part of the dues contributed by him for such a purpose by giving notice to this effect. This "contracting out" scheme was originally opposed by Labor, but did not appreciably reduce its financial support. Less than 105,000 of the more than 3,000,000 members of registered trade unions had by December 31, 1925, "contracted out" of paying dues to the Labor party. In 1927, the entire scheme was reversed. No part of the dues contributed by any member might be used for political purposes unless he, in advance and in writing, authorized such use. No figures are available upon how "contracting in" has worked, but Labor party and trade union officials say that it reduced the number of contributors by above one-half. The net effect, however, has been far less serious, as most of the unions doubled their dues for political purposes.

Mr. Ernest Bevin, general secretary of the transport workers' union, who in the summer of 1931 was referred to in the daily press as the

[8] [1910] A.C. 87.

[9] 2 and 3 Geo. V, ch. 30.

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dominant figure in the British labor movement, summed up the net effect of the Trade Disputes and Trade Union Act in the statement that the measure was "more of an insult than an injury." But insults are resented at least as much as injuries, and ever since the enactment of this law both the Trades Union Congress and the Labor party have been demanding its repeal. In the general election of 1929, MacDonald as leader of the Labor party definitely promised that one of the first acts of Labor, if given a majority in Parliament, would be the repeal of this law. In office, with only a plurality in the House of Commons, the Labor Government acted very slowly, presumably because it could not get assurances of Liberal support for a straight repeal.

Finally, in January, 1931, the Government brought in the Trade Disputes and Trade Union (Amendment) Bill,[10] which, in the preceding month, had been submitted to and endorsed by the general council of the Trades Union Congress, though by a divided vote. This bill repealed the provisions of the 1927 act relating to civil servants' unions and "contracting in," but merely amended the restrictions on strikes and picketing. For the prohibition of strikes which have "any object other than or in addition to the furtherance of a trade dispute within the trade or industry," it substituted a prohibition of strikes "of which the primary object is an object other than that of furthering purposes connected with the employment or non-employment, or terms of employment, or with the conditions of labor, of any person (whether or not employed in the trade or industry in which the strike takes place.)" The bill further provided that no one should be punished for participation in any strike until after it had been declared illegal by the High Court; and the High Court was not to declare any strike illegal unless the Attorney-General was a party to the action. As to picketing, the bill provided that only when there was reasonable apprehension of personal injury or of violence or damage to property should picketing be regarded as intimidating; and "besetting" of a private home was no longer forbidden.

Despite the concessions to win Liberal support, the Trade Disputes and Trade Union (Amendment) Bill barely passed second reading, and in the committee stage was subjected to a merciless attack on the score that it would once more legalize general strikes. Attorney-General Jowitt, who

[10] This bill and its advancement to second reading is reported in the *Parliamentary Debates*, Jan. 28, 1931, and the proceedings in committee in the *Official Report of Standing Committee C*, Feb. 10, 12, 17, and 19, 1931. On the trade union attitude toward the bill and the Liberal amendment thereto, see *Report of the Trades Union Congress General Council, 1931*, 167-169; a leaflet entitled *The Trades Disputes Bill*, published jointly by the Labor party and the Trades Union Congress in February, 1931; and Arthur Henderson, Jr., "An Analysis of the Trade Disputes and Trade Union (Amendment) Bill, 1931," 9 *Labour Magazine*, 390-392 (1931).

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had the bill in charge, answered the question of whether the general strike of 1926 would have been legal by saying that this depended upon whether in fact the primary purpose of that strike was industrial or political—an answer which did not satisfy the critics of the measure and increased the doubts of the trade unionists. At this stage, under the leadership of Sir John Simon, the committee adopted an amendment offered by Dr. Burgin, another Liberal, which declared illegal any strike or lockout "of which the effect at any time by reason of its extension or continuance is to expose the community or any substantial portion of the community to danger to health or safety by interfering with the supplies or distribution of essential food, water, fuel, light, medical or sanitary services, or other necessaries of life."

The trade unionists disliked the Government's bill because it recognized restrictions upon the right to strike; although these were so hedged about that it was doubtful whether they would ever be invoked. The Liberal amendment, to their minds, made the situation worse than it was under the 1927 act. Some members of the general council of the Trades Union Congress favored urging the Government to go to the country upon this issue, but the majority realized that it is impossible to arouse much popular interest in so technical a question as trade union law. The Government was urged to withdraw the bill, and on March 3, 1931, it did so—no doubt relieved that under the circumstances the blame for failure to redeem its pre-election promise could be placed upon the Liberals.

In the remaining months of the Labor government no further effort was made to effect any change in trade union law, as it was apparent that no measure satisfactory to the trade unions could be put through Parliament. When the MacDonald government fell, the Labor party once more declared in favor of repeal of the Trade Disputes and Trade Union Act. This question, however, was only a very minor issue in the general election of October, 1931; and the overwhelming defeat of the Labor party has ended all possibility of any fundamental change in the statute until there is another parliamentary upheaval.

As for the future, trade union law is certain to become again a live political issue if the Trade Disputes and Trade Union Act is held to render illegal some important strike; but that this will occur soon seems unlikely. That no decision construing this far-reaching act has been handed down in the nearly five years that it has been in effect seems remarkable until it is realized that it was a political rather than an industrial measure. The National Confederation of Employers' Associations had no part whatsoever in the passage of the 1927 act, and did not oppose the 1931 amendment bill. Employers in England complain about the alleged restrictive policies of the trade unions, but recognize and deal with them. Not all of British industry is unionized, and the trade unions have lost nearly

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half of their total membership since 1920. But British employers have no hankering for a real showdown with the trade unions and, when strikes occur, generally make no attempt to operate their plants. Resort to the courts in labor disputes is exceptional, and injunctions are practically unknown.

It is somewhat difficult for an American to understand the British attitude toward the trade unions. British public opinion is strongly set against dominance by the unions, which explains why it was so profoundly shocked by the general strike of 1926. The average thinking Briton who is neither an employer nor a trade unionist wants the law to be such that a strike which endangers the national safety or challenges the supremacy of the government may be declared illegal and dealt with somewhat like a revolution. At the same time, the trade unions are accepted as a part of the national life, and neither the British employer nor the great middle class wants to see them destroyed. There is a strong tradition in England against interference by the courts in labor disputes. It is almost unthinkable that there will be any development of restrictions upon the right to strike comparable with those of American court decisions. While the Trade Disputes and Trade Union Act of 1927 remains a possible serious menace to British trade unionism, it now gives appearance of having far less practical importance than was assumed at the time of its enactment.

EDWIN E. WITTE.

Wisconsin Legislative Reference Library.

The Swiss National Council Elections of 1931. On October 24 and 25, 1931, the Swiss voters selected the members of their National Council for the next four years.[1] The election was of unusual importance because the world-wide depression has created an economic crisis in Switzerland. Unemployment has been increasing, banks have been failing, and the national government has been piling up a deficit. A flood of candidates were in the field for the 187 seats now in the National Council (11 less than in the outgoing Council). Of the total of 740 candidates, 193 were nominated by the Independent Democrats, 141 by the Catholic Conservatives, 152 by the Socialists, 85 by the Peasants, 28 by the Liberal Democrats, 77 by the Communists, and 64 by the minor parties.[2] The oustanding feature of the campaign was the bitter struggle between the Socialists and the parties of the Right. All the modern methods of campaigning were employed by the leading parties. The Socialists made extensive use of motion pictures,

[1] A constitutional amendment adopted on March 15, 1931, extended the term from three to four years.

[2] For a discussion of the composition and aims of Swiss political parties, see the author's "Popular Participation in Swiss National Council Elections," in this REVIEW, XXIV (1930), 426-439, and *Why Europe Votes* (Chicago, 1930); also R. C. Brooks, *Civic Training in Switzerland* (Chicago, 1930).

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plays, and parades in their hope of capitalizing economic discontent by materially increasing their representation. They pointed to the great wealth of the country per capita and promised a better distribution of it. They also advocated the nationalization of banks and the reduction of military expenditures. The parties of the Right countered by pointing out that the present wealth of Switzerland was accumulated under the existing capitalistic order.

The elections went off quietly. There were no street riots as in Berlin and no bombings as in Chicago. One of the reasons for the placidity of the elections is shown in the following table, which compares the number of seats now with the number in 1928:[3]

Party	*1928*	*1931*
Independent Democrats	58	52
Socialists	50	49
Catholics	46	44
Peasants	31	30
Liberal Democrats	6	6
Communists	2	3
Others	5	3
Total	198	187

The Socialists maintained their relative position, but they failed to achieve the important gains that they had hoped to make. The Independent Democrats, who used to have an absolute majority of all the seats before the adoption of proportional representation in 1919, were the heaviest losers in the 1931 elections; but they still remain the largest party. The comparative strength of the other parties remained about the same. One of the reasons for this was the fact that the parties of the Right stood together in order to withstand the onslaughts of the Socialists. The Swiss national election law of 1919 permits those parties to unite which wish to pool their votes for the application of the preliminary quota. The final distribution of seats is made on the basis of a modified d'Hondt system. In most of the cantons, the parties opposed to the Socialists, i.e., the Independent Democrats, the Catholics, and the Peasants, united as in previous elections under the 1919 law. Had they not done so, the Socialists might have made important gains.

This is shown by the results in the canton of Geneva, where the opposition to the Socialists was less united than usual. The official returns for this canton were as follows:[4] registered voters, 45,829; total number who voted, 26,496; valid ballots, 26,401; blank and void ballots, 95. The total number of votes received by each list (each voter has eight votes) was as follows: Communist list, 2,053; Independent Democratic list, 37,202;

[3] *Journal de Genève,* October 30, 1931. [4] *Ibid.,* October 28, 1931.

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Socialist list, 84,917; Liberal Democratic list, 29,743; Economic Defense Union list, 10,769; Catholic list, 24,261; Independent list, 20,904; total list votes, 209,849.

The aggregate total of the Independent Democrats, the Liberal Democrats, and the Economic Defense Union who joined their lists was 77,714. The Catholics and the Independents refused to come into this union. The first assignment of seats on the basis of the Droop quota of 23,317 gave three seats to the united lists, three to the Socialists, and one to the Catholics. The final distribution gave the extra seat to the Socialist list because it had the highest average vote per seat, with that additional seat.[6] If the Catholics and the Independents had joined the others, as they did in 1928, they would have deprived the Socialists of this extra seat. Because of the disunion of their opponents, the Socialists, with about forty per cent of the total vote cast, were able to win fifty per cent of the representatives. The Socialists were not as lucky as this in most of the cantons.

In view of the fact that some of the elections which have occurred in Europe since the beginning of the world-wide depression in 1929 have resulted in great shifts in the relative strength of parties, the smallness of the changes resulting from the Swiss elections seems remarkable. The German elections of 1930 meant great gains for the National Socialists (Hitler party) and for the Communists. The British elections of 1931 were disastrous to the Labor party and more than gratifying to the Conservative party. In Switzerland, no such sweeping changes were manifest in 1931. How can this be explained? The Swiss system of representation is fairer to all parties than the British, but it is no better in this respect than the German. The explanation of the stability of the Swiss electorate lies in part in certain economic factors. The Swiss have been affected by the depression, but not as seriously as have the British and the Germans. According to available figures, at the time of the election the number of unemployed for every 1000 inhabitants was 75 in Germany, 58 in England, and only five in Switzerland. The Swiss do not have any war debts or reparations problem, and they have not been upset by inflation. The interaction between these economic conditions and certain political factors has produced a high degree of stability. It is interesting to note that only fifteen per cent of the faces in the new National Council will be new. The Swiss have confidence in their representatives, in their political institutions, and in their economic future.

HAROLD F. GOSNELL.

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[6] Within the united lists, the Independent Democrats won two seats and the Liberal Democrats one. If the Catholics and the Independents had joined, the distribution of seats would have been: Socialists three, Independent Democrats two, Liberal Democrats one, Catholics one, and Independents one.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

The twenty-eighth annual meeting of the American Political Science Association will be held at Detroit, Michigan, on December 28-30. The American Economic Association and kindred organizations with which the Political Science Association usually meets will, however, be meeting at Cincinnati, Ohio. The members of the program committee of the Political Science Association are: Morris B. Lambie, University of Minnesota, (chairman); John M. Gaus, University of Wisconsin; Joseph P. Harris, University of Washington; Raymond Moley, Columbia University; and H. C. Nixon, Tulane University. The committee to nominate officers of the Association for 1933 consists of: John A. Fairlie, University of Illinois (chairman); Charles A. Beard, New Milford, Conn.; Robert T. Crane, Social Science Research Council, New York City; Robert S. Rankin, Duke University; and Henry R. Spencer, Ohio State University. The auditing committee's membership is: W. Brooke Graves, Temple University (Chairman); William S. Myers, Princeton University; and Roger H. Wells, Bryn Mawr College.

Professor Herbert Kraus, of the University of Göttingen, is serving as an exchange professor at Princeton University during the current academic term, and is giving instruction in the School of Public and International Affairs.

Dr. Stanley K. Hornbeck, chief of the Far Eastern division of the Department of State, addressed the Council on Foreign Relations at a dinner meeting in New York on February 24 on the Far Eastern policy of the United States.

Professor Pitman B. Potter will leave the University of Wisconsin at the close of the current semester and in the autumn will resume a post on the staff of the Graduate Institute of International Studies at Geneva, Switzerland.

During the last week of January, Professor Clarence A. Berdahl, of the University of Illinois, delivered a series of five lectures at the Graduate Institute of International Studies at Geneva on the policy of the United States toward the League of Nations.

Mr. Clinton Rogers Woodruff, honorary secretary of the National Municipal League and a veteran worker for the cause of improved city

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government, has been appointed director of public welfare in Philadelphia.

Professor Rufus D. Smith has been advanced from associate dean to dean of the Washington Square College of New York University. In addition, Professor Smith is director of the extension and evening divisions of the University.

Professor Louis B. Schmidt, of Iowa State College, will give courses on American history and international relations in the summer session of the University of Alabama.

A special feature of the coming summer session of the University of Hawaii will be a School of Pacific and Oriental Affairs, organized to include lecture courses, seminars, and round-table discussions on contemporary international problems of the Pacific region. Visiting members of the faculty will include Professors Arthur N. Holcombe and Manley O. Hudson, of Harvard University, and Charles E. Martin, of the University of Washington.

The College of Liberal Arts of Northwestern University has announced a seminar in social science research in Paris, under the auspices of the University of Paris, extending from June 15 to July 31, 1932. The seminar will be conducted in English, but will be open only to graduate students having a reading knowledge of French. The course is planned to yield three semester-hours of credit, and is designed to assist travelling fellows and other graduate students in utilizing research facilities in Paris and its environs. Fuller information may be obtained (until June 1) from Professor William Jaffé, Northwestern University, Evanston.

The National Municipal League has created a committee to prepare a recommended model state law regulating special assessments in local government. Carl H. Pforzheimer, of New York City, is chairman, and other members include C. E. Rightor, of the Detroit Bureau of Governmental Research; Paul V. Betters, executive secretary of the American Municipal Association; Walter Matscheck, director of the Civic Research Institute of Kansas City; Lawson Purdy, of New York City; and Clarence E. Ridley, executive secretary of the International City Managers' Association.

The regular semi-annual meeting of the Academy of Political Science (New York) on April 13 was devoted to the general subject of the crisis in world finance and trade. Forenoon and afternoon sessions were devoted to (1) the breakdown in world trade and (2) war debts and repara-

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tions, and Sir Josiah Stamp addressed the dinner meeting on world organization in finance and trade.

Under the chairmanship of Representative H. N. Graves, a joint legislative committee on organization and economy recently created in Texas has entered upon a comprehensive study of the organization and functions of the state government. The inquiry is planned to include an analysis of the duties of every officer and employee receiving compensation in any amount or form from the state, and is to be followed by the formulation of a scheme of reorganization in so far as may appear desirable. A staff of experienced persons has been brought together for the work, and Messrs. Griffenhagen and Associates have been retained as consultants and directors. A special study of the state's financial problems is also planned.

The Missouri supreme court, on January 4, held that the approval of the governor is necessary for any act changing the congressional districts of the state, thus invalidating the districts created by an act of the 1931 General Assembly which was vetoed by Governor Caulfield. In substance, this decision is similar to that of the supreme court of New York on November 8, which was subsequently affirmed by the Court of Appeals of that state, but runs counter to the decision of the Minnesota supreme court in a similar case. Persistent attempts by members of Congress and state legislators of both parties in Missouri to induce the governor to call a special session of the Assembly for purposes of redistricting have met with no success.

Dr. John H. Latané, member of the Page School of International Relations of the Johns Hopkins University and former head of the department of history at the same institution, died suddenly, from a heart attack, at New Orleans on January 1. Dr. Latané had gained high distinction as a scholar by his writings in the field of the foreign relations of the United States, and especially of those concerning Latin America. He was at all times interested in the political implications of historical facts, and did not hesitate to state his own views as to the political policies revealed by these implications. This practice gave to his writings a more than usual interest to political scientists. Dr. Latané was, in truth, as much a political scientist who sought to base his conclusions upon historical evidence as he was an historian who endeavored to derive political lessons from the records of past events.

The Social Science Research Council has appointed a continuing Committee on Pressure Group and Propaganda Research. The committee would like to be in touch with the work and plans of scholars in all fields

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relevant to this central topic. It is interested in every inquiry into specific promotional activities in society. This includes analyses of the work of such organizations as the Anti-Saloon League or the Chamber of Commerce; the study of movements like the Populist movement; the analysis of the use of such media as the press, moving picture, and radio; and the technique of measuring shifts in social attitudes. There is no doubt that those who are doing research in cultural history, political science, economics, sociology, advertising, journalism, and psychology are among those who have made, or can make, contributions to this field. The committee would be glad to be notified of research proposals under way or in prospect. Communications may be addressed to the chairman or to any member of the committee. The personnel consists of Professors Kimball Young, University of Wisconsin; Ralph D. Casey, University of Minnesota; Peter Odegard, Ohio State University; E. Pendleton Herring, Harvard University; Schuyler Wallace, Columbia University; Merle Curti, Smith College; Harold F. Gosnell, University of Chicago; and Harold D. Lasswell, University of Chicago, chairman.

Under the joint auspices of the Harvard-Yenching Institute, the Committee on the Promotion of Chinese Studies of the American Council of Learned Societies, the Committee on Japanese Studies of the same organization, and the Society for the Promotion of Japanese Studies, a seminar on Far Eastern Studies will be held at Harvard University from July 6 to August 17. The aim of the seminar is to bring together a group of trained and mature scholars who, although their major preparation has been in other fields, find it necessary or desirable to offer instruction in Far Eastern civilizations and affairs, and to give them the benefit of six weeks of intensive work with experts in the field. These experts will include Dr. Arthur W. Hummel, chief of the division of Chinese and Japanese literature at the Library of Congress, Dr. Lucius C. Porter, professor of philosophy in Yenching University and visiting professor at Harvard University, and Mr. Langdon Warner, lecturer in fine arts at Harvard. Though directed by an independent committee, the seminar will be an integral part of the summer session of Harvard University. The committee of direction will be able to offer a limited number of persons (perhaps twenty) assistance in the amount of $125 apiece toward the cost of attendance. Further information may be obtained from Dr. Mortimer Graves, American Council of Learned Societies, 907 Fifteenth St., Washington, D.C.

Fourth Biennial Conference of the Institute of Pacific Relations. The conference was held in the International Settlement at Shanghai from October 21 to November 2, 1931. Delegates numbered 124, of whom

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nine came from Australia, ten from Canada, thirty-one from China, nineteen from Great Britain, nineteen from Japan, six from New Zealand, five from the Philippines (in an independent delegation), and twenty-five from the United States. There were six observers, who were seated with the delegates—one from the Netherlands, four from the International Labor Office, and one from the Secretariat of the League of Nations. The Pacific Committee of the Institute of Pacific Relations in the Union of Socialist Soviet Republics, which consists of representatives of important scientific, commercial, and literary organizations, was elected to membership in the Institute. University administrators and professors, bankers and business-men, social workers, publicists, journalists, lawyers, engineers, and others composed the conference membership.

Although floods, civil warfare, and foreign intervention caused doubts as to the feasibility of holding the conference until it actually got under way, the session was conducted according to program save for the change of meeting-place from Hangchow to Shanghai. Indeed, circumstances which threatened to weaken, if not disrupt, the Institute operated to strengthen it. Careful preparation, in which a considerable number of delegates participated during a fortnight prior to the conference, resulted in a program arrangement that introduced the burning issues of the Manchurian problem under general topics rather than as specific questions. Thus it was possible to spend two days in round-tables on diplomatic machinery in the Pacific and three days on China's foreign relations without arousing opposition to the discussion of the most highly controversial issues, and with but one incident in which interchanges of views caused uncomfortable tension. Special credit for the conduct of the conference is due its presiding officer, Dr. Hu Shih, leader in China's philosophical and literary renaissance. He was remarkably effective, whether presiding, giving an address, or participating in committee and round-table discussions.

The subjects dealt with ranged from China's economic development, through Oriental labor problems and standards of living, migration and race problems, Pacific dependencies and cultural relations, to trade and diplomatic relations and the machinery of diplomacy. Discussion was assisted by the presentation of data papers and syllabi numbering ninety-two, many of which are valuable contributions to knowledge. Members met in round-tables and general conferences presided over by chairmen selected *pro tempore* by the program committee. Discussions were informal and serious. Special interest was shown in the application of the various topics to China, and in suggestions for assisting toward solutions of China's domestic and international difficulties.

A delegation of forty members was sent to Nanking to honor the

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memory of Dr. Sun Yat-sen by laying a wreath upon his magnificent tomb. President Chiang Kai-shek received the delegation, and other members of the government extended courtesies. The conference spent a week-end in Hangchow, at the invitation of city and provincial officials. A number of members visited Peiping at the close of the conference, and individuals followed their own interests in trips to Canton, Hankow, Changsha, Mukden, Seoul, and Tokyo. Honolulu was a hospitable and interesting port of call for the majority of the delegates.

The Institute is an unofficial organization composed of councils in the states above named and governed by a Pacific Council representing the member councils. In addition to biennial conferences, it functions through a central secretariat at Honolulu and secretariats of the various member councils; also through international and national research and program committees. The object of the Institute, in the words of its constitution, is "to study the conditions of the Pacific peoples with a view to the improvement of their mutual relations." Founded in 1925 at Honolulu, it has held four conferences—two at Honolulu, one at Kyoto, and one at Shanghai—and is now planning a fifth for 1933 in which the general topic for discussion, as tentatively decided, will be "conflict and control in the economic, political, and cultural life of the Pacific." Fact-finding and research have been significant aspects of the Institute's work—so significant as to have raised a problem of presentation of the extensive data secured in a manner that will be helpful to conference delegates rather than confusing to them through its plenitude. A number of important works resulting from original research have been published under Institute auspices, a large item in its budget being devoted to research.

Institute conferences exhibit an interesting combination of motives. Speaking generally, these are two: to obtain information and to assist in ameliorating conditions of difficulty in the international relations of Pacific countries. Thus the scientific motive of the search for truth is yoke-fellow to the practical motive of assisting to better the world. The problem of discussions thus dually motivated is obvious: By what methods can the truth be stated and analyzed acceptably to political sensibilities? This problem, difficult enough in conferences composed of members of a single nationality, is intensified in an international conference.

Clearly, unless unpleasant facts are stated fully and frankly, there is danger of the perversion of high ideals to the assistance of ignoble state policies. The problem involves questions of personnel (members with adequate knowledge may be ineffective in presentation); of atmosphere (a single brow-beating member may stampede a round-table into excited, ill-considered rejoinder or resentful indifference, and intimations from a

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steering committee that certain topics are taboo may discourage members in their treatment of permitted topics); of chairmanship competent to create a confidence that dispels national suspicions and individual timidity and promotes an easy interchange of opinion; of the proper use of "experts," so that exact knowledge shall be available but shall be restrained from suffocating discussion or antagonizing the "practical" men and women of affairs; of prior arrangement, calculated to stimulate preparedness on the part of all members; etc. For the student of international procedure, the opportunity to consider these aspects of an Institute conference is as profitable as that of participating in discussions of the profoundly difficult and important subjects which appear upon the conference agenda.

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Personnel of Republican and Democratic National Committees. The following analysis of the membership of the Republican and Democratic national committees for the term 1928-32 is intended as a preliminary statement of a detailed analysis which will portray American party organization in more definite terms than have hitherto been applied. The data were taken from *Who's Who in America, Biographical Directory of the United States Congress,* official state handbooks, and such specialized sources as the *Directory of Directors, Who's Who in Government,* and regional directories. It has been found necessary to exclude from the study the women members of the committees, since information concerning them could not be secured. Consequently, the analysis is confined to the 108 men, one from each state for each party and twelve additional "executive" members, who direct the national party organizations.

Age of committeemen. An average age of 58.1 years would seem to indicate that party managers represent greater experience, in terms of age at least, than most public officials. Republican committeemen average 58.4 years, while Democratic committeemen average 58 years. The oldest, a Democrat, is 86; the youngest, a Republican, is 43.

Education. Approximately thirty-eight per cent, or 41 members, have had educational training of college rank. Of these, 39 have degrees. LL.B. degrees head the list with 19; A.B., 8; M.A., 5; M.D., 3; B.S., 3; C.E., 1. The two parties are on essentially equal terms, the Republicans being represented by 21 members, the Democrats by 20.

Membership in Fraternal Orders. Fifty-three committeemen are recorded as members of fraternal orders. Of these, 34 are Republicans and 19 Democrats. The distribution of membership in the various orders is as follows:

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	Republicans	*Democrats*
Masons	30	12
Elks	13	8
Odd Fellows	8	2
Knights of Pythias	5	3
Knights of Columbus		5
Jr. O.U.A.M.	2	
Moose		1

Religious Affiliations. Sixty-three members list their religious affiliations as follows:

	Republicans	*Democrats*	*Total*
Methodist	14	2	16
Episcopalian	6	10	16
Catholic	4	9	13
Presbyterian	2	5	7
Christian Disciples	2	3	5
Congregationalist	3		3
Hebrew	1	2	3
Baptist		1	1
Christian Science	1		1
Mormon	1		1

Political Experience. The average member of a national committee has served 8 years in that capacity. The average Republican member has served 9.2 years, while the average Democrat has seen 7.7 years in his office. To this experience, the average Republican member adds 14 years as a member of his state central committee, though the average Democrat has spent but 5 years in that position. In addition, the average Republican has held public office 9.6 years and the average Democrat 10.5 years.

Economic Interests and Alliances. No other item of information is so significant as the relation of the managers of party activity to those powerful pressure groups who represent certain well-defined economic interests. Whereas various considerations often force these groups to adopt the cloak of anonymity in other fields of political life, the following table seems to indicate that their control in party organization is not subject to any such limitation.

	Republicans	*Democrats*	*Total*
Banking and insurance	31	16	47
Railroads and other utilities	13	7	20
Manufacturing	13	4	17
Publishing	2	7	9
Oil	4	1	5
Coal	4		4
Lumber	3		3
Realty	1	2	3
Cattle and sheep	4	4	8
Wheat-farming	1		1
Orchards		1	1
Law	20	24	44

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The business-man's control of national party organization is here clearly illustrated. Even the lawyer, who has so often dominated the American political scene, is submerged; for of the 44 members of the bar listed above, only 19 are engaged exclusively in the practice of the profession. The others are actively occupied with one or more of the business enterprises included in the table. Agriculture is not directly represented by any member, for the lone wheat-farmer is really a business man managing a 10,000-acre enterprise, and the cattle and sheep representatives combine banking with their activities. Labor has not even an indirect representation.

Sectional Aspects of Economic Interests. The relation between economic forces and party organization is even more striking when the data are arranged sectionally. If we use Professor Holcombe's familiar division of the United States into ten politico-economic sections, we find that the business-man predominates in every section except in the lower South and the west-central states. In these two, his control is shared by the lawyer, who is often associated with him as counsel or partner. Banking and insurance exercise a controlling influence in all but these two sections, and even here it is a close second.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
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Theodore Roosevelt; A Biography. By HENRY F. PRINGLE. (New York: Harcourt, Brace and Co. 1931. Pp. 627.)

President and Chief Justice; The Life and Public Services of William Howard Taft. By FRANCIS MCHALE. (Philadelphia: Dorrance and Co. 1931. Pp. 321.)

Mr. Pringle's life of Roosevelt is a biography of great distinction. It stands out in two respects from previous writings on the subject. In the first place, the author has had unrestricted access to numerous letters and papers not available to earlier biographers, and has used this material with a scholarly thoroughness, judgment, and detachment which have made his book a marked contribution to our knowledge and understanding of Roosevelt's career. In the second place, it is an amazingly skillful character study, without the earmarks of any conscious effort upon the author's part to make it such. So free is it from either abuse or adulation, so merciless is it in its presentation of facts, that the personality and character of the man Roosevelt, his egotism, his ignorance, his restless vitality, his sincerity, and his strength, are indelibly imprinted upon the reader's mind. It is in effect a "debunking" biography which provides little material for the hero-worshipper; but it is not an unfriendly, nor is it an unsympathetic biography, for it gives the reader so thorough an understanding of the man, and the motives and impulses which dominated him, that even his mistakes and foibles come to be viewed with friendly tolerance born of a close, and almost personal, acquaintance.

One cannot fail to recognize from Mr. Pringle's study that the key to Roosevelt's character and personality was a colossal and dominating egotism, coupled with an amazing physical and mental vitality. It was a two-edged sword. It explained much of his greatness and many of his failures and errors. At its best, it enabled him, sublimely conscious that he was right, to wield perhaps a greater influence for good upon the public opinion of the country than any predecessor. And in that influence, directed to the problems of conservation, pure food and drug reform, railroad and trust control, and the reform of campaign expense abuses—to mention but a few—are to be found his greatest services to the country. He was a great evangelist of good causes, "a combination," as John Morley put it, "of St. Vitus and St. Paul." His conviction that he was right was contagious and compelling, and it brought results beyond the power of a less confident man. With this egotism Roosevelt coupled an amazing faculty of self-hypnotism. He was not only sure, at any given

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time, that he was right, but he was also sure that he had always been right, even, as Mr. Pringle's record shows, in some of those cases in which the records did not bear him out. The instances in which his veracity was challenged, or more commonly those in which he challenged the veracity of others, frequently lend themselves to the interpretation that he was quite capable of persuading himself in all sincerity that he must have said, and therefore did say, what at some later moment he knew he ought to have said. But there was a certain ruthless cruelty in this which bore heavily upon those who became its victims.

One can hardly escape the conviction that Roosevelt actually felt, when embarked upon what he regarded as a righteous cause, that he was above the law. His dramatic threat to send the United States army to take over and operate the coal mines ended the great coal strike of 1902, and was hailed as a great achievement in spite of the fact that the constitutional propriety of such a course could hardly be established. His defiance of the Senate through the establishment of the famous "executive agreement" with Santo Domingo in 1905 came perilously close to usurpation of power; and Roosevelt himself in his later years abandoned all effort to justify on legal grounds the taking of the Panama Canal zone, but defended his course upon the "moral" ground that those whom he had contemptuously referred to at the time in his private correspondence as the "Dagos" of Latin America could not be allowed to obstruct the onward march of civilization by blocking or delaying the canal project. "I took Panama," said Roosevelt in his *Autobiography*, "without consulting the cabinet."

A second quality of Roosevelt which was of vast importance was a boyish impulsiveness, an adolescent quality, which he never outgrew. His intimate friends were conscious of it, and it endeared him to them as evidence of a lovable and generous spontaneity. But it gave a flavor of immaturity to certain phases of his statesmanship. It affords a convincing explanation of his life-long jingoism. He loved a fight for its own sake. "I had an elegant row" with the Pope, he wrote Lodge from Rome in 1910. He believed in war, and repeatedly wanted this country to engage in war because he longed to be in it. His belligerent hope expressed in 1886 that not a foot of American soil would be held by any European power, his confident prophesy in 1895 that unless England agreed to arbitrate the Venezuelan dispute we would resort to arms and "Canada would surely be conquered," his contemptuous charge that McKinley, who was trying to preserve peace with Spain in 1898, "has no more backbone than a chocolate éclair," his supreme joy in his own military achievements in Cuba, his reluctant swallowing of his pride in 1917 in asking of President Wilson, whom he hated, permission to lead a division

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in France—all evidence a boyish itch to be in combat for pure joy of the struggle.

And with this impulsive vigor of action there was no room in Roosevelt's makeup for cold and far-sighted calculation. He did not plan far ahead; and such plans as he made were subject to change without notice. His course was full of inconsistencies and contradictions. He loudly denied that he would accept the vice-presidential nomination in 1900, only to change his mind without apparent anguish a few days later; in a moment of impulse in 1904 he foreswore all intention of ever seeking another presidential term, only to repudiate that dictum in 1912; he heralded the soundness and justice of Germany's invasion of Belgium in early August of 1914, only to engage later in the most violent excoriations of that act. Mr. Pringle shrewdly observes that the most conclusive refutation of LaFollette's charge in 1912 that Roosevelt had deceived and tricked him by encouraging his (LaFollette's) campaign, only to step in later and appropriate the fruits of that campaign, lies in the fact that Roosevelt was temperamentally incapable of evolving or executing a coldly calculated scheme of that sort.

It follows from all this that Roosevelt's statesmanship was not of a profound sort, resting upon any carefully reasoned philosophical basis. He turned his hand to countless things, espoused numerous causes, preached multitudinous lay sermons, but he remained essentially an amateur. He had no solid or thorough knowledge of international affairs or of economics, and there is no evidence that he regarded such knowledge as really important. His social philosophy was of a wholly orthodox and conventional variety. He abhorred birth control and easy divorce as both dangerous and uncleanly. In the famous Progressive platform of 1912, there was little that originated with Roosevelt, and much for which his enthusiasm was of very recent origin. He never comprehended the real nature of the function of American courts in reviewing the constitutionality of laws. For judges who ruled against him or his projects, he had nothing but contempt or abuse. A liberal judge was one who agreed with him, a test probably applied unconsciously by most of us. In his earlier days, he had referred to a venerable justice of the Supreme Court as "an amiable old fuzzy-wuzzy with a sweetbread brain." Judge Grosscup's decision setting aside the famous $29,000,000 fine imposed on the Standard Oil Company had, he declared, "hurt the cause of civilization;" while Judge Grosscup's two colleagues were branded as of "the type produced by improper subserviency to corporations." Most illuminating is the letter written to Lodge before the appointment of Oliver Wendell Holmes to the Supreme Court, stating: "Now I should like to know that Judge Holmes was in entire sympathy with our views, that

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is with your views and mine . . . before I would feel justified in appointing him." His later advocacy of the recall of judges and judicial decisions was the logical culmination of a life-long impatience with judges with whom he did not agree.

And yet Mr. Pringle's book does not obscure Roosevelt's greatness, nor the range and value of his services to the nation. "That madman," as Mark Hanna had termed him, was a new type in the public life of the country. By his originality, his aggressive courage, honesty, and essential wholesomeness, he raised the country's political blood count from the anæmia of the eighties and nineties. He accomplished not so much actual constructive reform as nation-wide appreciation of the many vital national problems with respect to which reform was necessary. He was a militant propagandist. If the author has at any point been less than just in his treatment, it is in the scantiness of the space devoted to the great causes for which Roosevelt fought and the success of his efforts to arouse and educate the public opinion of the country. The results may have been a bit intangible in many cases, but they were nevertheless of vital importance. And furthermore, from this accurate and detailed story, leaving as it does a very considerable wreckage of the myth which has grown up around the name of Roosevelt, there stands out the amazing strength and integrity of a man whose tremendous ambition and egotism were motivated by a genuine patriotism and a desire to render public service.

Mr. Pringle's craftsmanship is admirable. The book has grace and vigor of style, and is thoroughly but not offensively documented. It seems safe to predict that it will remain for a long time the most accurate and generally serviceable biography of Theodore Roosevelt.

Mr. McHale's biography of Taft cannot be fairly considered in the same class with Mr. Pringle's book. It is not based upon the examination of letters or papers, but relies rather upon the various books about Taft which have previously appeared. The book gives the reader the impression that the author made use of the easily available data about his subject, and that when that was exhausted he stopped. It suffers alike from the inclusion of purely personal, and even trivial, matters and from the omission of any adequate treatment of numerous important aspects of the Taft career. Eleven pages are devoted to the former President's illness and death, in contrast to ten pages dealing with his entire career as Chief Justice. Mr. McHale is quite obviously not at home in the law, and his references to Taft's decisions, while brief, are frequently misleading. In recounting the achievements of the Chief Justice, the author makes no reference to what was perhaps the most outstanding of all, namely, the successful prosecution of the campaign resulting in the enactment of the Judiciary Act of 1925. Those familiar with the results

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of this salutary legislation upon the condition of the Court's docket will read with some astonishment the following naïve statement: "Realizing that a great deal of delay was not due altogether to the intricacies and technicalities of the law and rules of practice, and that much of it could be circumvented by a little extra labor on the part of the Court, he set the example by working hard himself. His efforts were fruitful. By the establishment of new rules and each justice giving a little extra time to his duties, in the course of a few years' time the Court had caught up with its docket, and for the first time in years the Court continued to leave a clean docket when it adjourned each year."

Mr. McHale has told his story pleasantly. The chapters dealing with the earlier periods of Mr. Taft's career are better than the later ones. The book lacks objectivity throughout, being written from the point of view of hero-worship. Its usefulness is impaired by the lack of all documentation and the absence of an index. It cannot be said to make any substantial contribution.

ROBERT E. CUSHMAN.

Cornell University.

Newton D. Baker: America at War. By FREDERICK PALMER (New York: Dodd, Mead and Company. 1931. Two volumes. Pp. xiv, 421; x, 450.)

These volumes contain a roughly chronological narrative of the career in office of President Wilson's secretary of war from March 9, 1916. The author has had access to Mr. Baker's personal papers, to the correspondence between the War Department and General Pershing, and to a mass of other first-hand material, and has brought to this work his long background of experience as a war correspondent.

The result, as a study of the character and methods of a chief actor in the great drama of the war years, is of intense interest. Coming into office "not knowing anything about this job," and with "no obsessions or prejudices about policies," the Secretary exhibited at all times a complete loyalty both to his chief and to his subordinates. In connection with the command in the field, it is related, in Mr. Baker's words, that he had informed General Pershing that but two orders would be given, "one to go to France and the other to come home, and that in the meantime his authority would be supreme." To "sustain and support" those chosen to exercise authority, as Colonel Palmer makes clear, was a guiding principle which, with a remarkable spirit of modesty, brought to the Secretary the enthusiastic devotion of his associates. One can find in this book an illuminating revelation of an unusual personality—of a man of great abilities and unquestioning loyalties. As a critical analysis of the

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general scope of the American effort in the war, the result is less satisfactory. There is, indeed, a valuable collection of material which will serve as points of departure for the future student of history who must some day essay the task of a comprehensive review and appraisal of American policy and action from 1914 to 1920. Whether deliberately or not, the author has made little attempt to formulate impartial and considered judgments of this character.

Possibly a generation must pass before the philosophic historian can view in scale those momentous six years and be able with justice to assign responsibility and praise and blame. In fulfilling—faithfully, and often brilliantly—his task, Mr. Baker was bound by major policies which he accepted without question, but which were not of his making. Will not the future student find that the period which, almost equally with the year after the American declaration of war, determined the speed and effectiveness of the American effort was the year beginning with Mr. Baker's accession to office in March, 1916? That year—following the resignation of Secretary Garrison upon the President's failure to support him on the Continental Army plan—was, as these volumes confirm, one of almost complete drift so far as any preparation for war on land was concerned. The President had said to his new Secretary "until we were nearly in the war" that "the idea of intervening in the war was the last thought he had in the world." And, accepting this dictum, it was Mr. Baker's view that "until we went into the war the preparation for intervening with guns and munitions would have been regarded as madness." In consequence, virtually nothing was done by the government, even in those vital two months which intervened between the breaking of relations on February 3 and the declaration of war on April 6. Was this wise statesmanship or a lack of ordinary prevision? The answers to this and other major questions will not be found in this book, but remain for the future historian when this era may be viewed in a truer perspective.

GRENVILLE CLARK.

New York City.

John G. Carlisle; Financial Statesman. By JAMES A. BARNES. (New York: Dodd, Mead and Company. 1931. Pp. xiii, 552.)

This volume is one of a series on American Political Leaders, edited by Professor Allan Nevins. It recalls a name almost forgotten. Yet forty years ago John G. Carlisle was one of the most prominent men in American public life. The volume relates the story of his career, as lieutenant-governor of Kentucky; as a member of the state legislature (1859-69);

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as congressman after 1876; as speaker of the national House (1883-89); as United States senator (1891-93); and as Secretary of the Treasury during Cleveland's second term.

The author relates with fullness and interest the vain struggle of Carlisle in the eighties for tariff reform. The forty or more Democratic protectionists led by Randall of Pennsylvania (the "half-Democrat" with his "forty thieves") were too much for the tariff reformers. There were always enough high-tariff Democrats in Congress to defeat reduction.

Fully half of the volume is given up to Carlisle's career after he became Secretary of the Treasury. These ten chapters deal with Cleveland and his financial policies, the problem of the surplus, the gold reserve, the silver purchase act, the bond issues, the Morgan-Belmont syndicate, the long silver struggle, the schism in the Democratic party, and Bryan's nomination and defeat in 1896. The author holds to the rectitude and soundness of the Treasury policy of Cleveland and Carlisle. He so constantly gives the advantage to the gold standard side of the financial controversy that one is led to doubt whether he has understanding or fairness for the other side. In Bryan and his wing of the party, the author is unable to see any merit or cause. The "poor deluded silverites had no idea of the economic principles involved." The "people of the West were crazy on the money question; they cannot discuss it rationally." The Populists and Silverites were a "medley of malcontents, one idea hobbyists, unreasoning fiatists, steadily unfortunates, born tired, theorists, and blatant demogogues." There is much more of such language of violent partisanship, which is hardly suitable to judicial biography.

There is an interesting chapter on Carlisle's personal characteristics, showing his habits (not always sober), recreations, and contacts with political friends and foes. There are political cartoons and other illustrations; but the reader would be better pleased to have "The Ladies of the Cabinet" identified. There are sidelights on members of the Congresses over which Carlisle presided—figures then in the public eye but now disappeared from memory, and in most cases destined to be unrecorded in the pages of history.

Though partisan, the volume is readable and full of information, showing a wide and varied knowledge of American history. It presents a forcible defense of Carlisle, with but little criticism of him. There is a good index, and a full bibliography. On the whole, the volume well deserves a place in the valuable series to which it belongs.

JAMES A. WOODBURN.

Ann Arbor, Michigan.

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Society; Its Structure and Changes. By R. M. MacIver. (New York: Ray Long and Richard R. Smith, Inc. 1931. Pp. xvi, 569.)

This book is a study in social relationships, and the author himself regards it as primarily a treatise in the field of sociology. Mr. MacIver's viewpoint in social theory is direct and qualitative. Against the mechanistic conception of society, with all its ramifications in behaviorism, he inveighs heavily. The art of interpretation is basic with him, and his goal is the discovery of causal interdependence. The focus of his study is the nature of the social bond, which turns out to be harmony between individuals and society. Upon this basis, he discusses social structure, society and the environment, and social change.

The author's treatment of the state is subordinated to the general topic of social relationships. There is not much in his discussion of the state that is new to readers of his other works. He aspires to find a mediating position between the traditionalists and the pluralists by making the community paramount and defining the state as an agent of the community. This leads him to class the state among associations. He hastens, however, to point out that the state differs from other associations in a number of particulars, notably the extent of its jurisdiction and the coerciveness of its commands. The net result is a conception of the state as an association subordinate to the community, specialized as to its functions, and limited as to its competence.

This seems to be a sound interpretation of the state from the viewpoint of a sociologist. Léon Duguit, who wrote so copiously on the subject of political pluralism, fully acknowledged his indebtedness to Durkheim. When society or the community or social solidarity is exalted to the position of supreme importance, all mere associations must be ranged on a lower level. This applies to the state. In Mr. MacIver's social philosophy, it is only one of the agencies of the community.

It appears, however, that the author is obliged to labor somewhat to fit the attributes of the state into the category of associations. He says: "We are born into communities, but we create or are elected into associations" (p. 13). Further: "The state is different in important respects from all other associations. . . . All other associations, in a modern society at least, are voluntary. We belong only if we want to; we can leave them if we want to, except in the case of the family, where the state, recognizing the peculiar obligations of the marriage contract, sets limits to this privilege. The state alone has the last resort of compulsion" (p. 14).

There is some doubt as to whether or not Mr. MacIver makes good his classification. His emphasis upon the unique character of the state weakens his argument that the state is an association among other associations. His exceptions would all disappear if the state were conceived of

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as the community (in the MacIver sense) organized in its jural capacity. This would give the state only a specialized function, pertaining to order, security, and justice; it would limit the competence of the state; and it would fix the authority of the state in the will of the community. This would apply at least to democratic states. It would obviate the necessity of giving coherence and directive will to the amorphous community and exalting it to a place above the state. The organization of the material is excellent, and the style is clear and concise.

WILLIAM H. GEORGE.

University of Hawaii.

The Problem of Federalism; A Study in the History of Political Theory. By SOBEI MOGI. With a Preface by Professor Harold J. Laski. (New York: The Macmillan Company. 1931. Two volumes. Pp. 1144.)

The history of federalism as a problem of statecraft dates back to the time of the Greek city leagues. To quote Mr. Mogi: "The first glimpse of federal principles was about the third century B.C. in Greece. . . ." Aristotle, Polybius, Plato, and Strabo described and analyzed the Achæan League, but the essence of "true federalism" they did not discover, and after Strabo "we hear nothing for centuries about unions of states."

Under the Roman Empire, the whole world was supposed to be ruled by sovereign Rome until the barbarians put an end to the Empire and its shadowy claim to universal dominion. The legists of the period wrestled with the term *universitas* to define the corporate status of the political entities within the Empire. Bartolus distinguished between *universitates* not subject to a superior, and such recognizing a superior, but "madé no distinction between *civitas, regnum,* and *imperium,*" the differences between which he held to be merely quantitative.

The Holy Roman Empire of the German Nation posed as the legal successor to the *Imperium Romanum.* In the definition of Bodin, this "Estate of the Empire of Germans," however, was "no monarchie, but a pure Aristocratie, composed of the princes of the Empire, of the seven electors and the imperiall cities." It was a mere confederation, not a state. "In the Holy Roman Empire, the term *universitas* . . . was enlarged to include all *universitates,* which had no superior except the Emperor, and by this they were recognized as having something of sovereignty; but still no clear distinction was drawn between corporations whose status was based on private law and those based on public law." Thus the mediæval political system implanted the germ of federalism in the concept of coördinated authority; but Mr. Mogi agrees with Gierke "that no federalism had been explicitly manifested until the conception of sovereign states came into existence." So he holds that "the idea of federalism in the modern sense can hardly have reached any political

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thinkers till the time when the American constitution was drawn up."

Federalism, in the modern sense, has been a practical issue in the empire-building of England, in the development of the American union, and in the national consolidation of the German states. In no one of these instances did the principle spring from doctrinaire ideas, but only from the exigencies of experimentation. Philosophical speculation is the *post factum* attempt to establish a *raison d'être* for the new "ism," as we note in the writings of the American Federalists and in the *Staatslehren* of the Germans. But even so, the Federalists are more inclined to utilitarian than metaphysical motivation. As to the English, they are of all Western peoples the least inclined to philosophical speculation in politics. Besides, they have ever been so busy making federalism serve the Empire, by way of the distribution of power on the basis of practicability, moderation, and mutual convenience, and they are still so deeply engrossed in the task, that they could not as yet have found the perspective for theorizing conjecture. It is quite reasonable, then, that less than three hundred pages should have been found ample to take care of American and English speculation on federalism. But why devote almost three times three hundred pages to demonstrating German philosophizing propensities on that subject? To be sure, nowhere has there been more political theorizing than in Germany, but nowhere is there greater need of critical weeding. In citing the views on federalism of not less than twenty-four members of the National Constituent Assembly of Weimar, Mr. Mogi manifests a degree of courtesy excelled only by that of the publisher in furnishing the opportunity for citation.

It is not difficult to agree with Mr. Laski, who ventures to think that "Mr. Mogi's discussion of modern federalism will be found interesting if only because it reveals the impact of peculiarly Western conceptions upon a mind to which they have come with the full force of novelty." One is also inclined to agree that "Mr. Mogi has traversed ground which it is unlikely any scholar will travel again, at least in quite the same way."

Hence Mr. Mogi's *Problem of Federalism,* as a study in the history of theory, bids fair to maintain for a long time to come its undisputed position as a monumental reference work on the subject.

JOHANNES MATTERN.

The Johns Hopkins University.

Intelligence in Politics; An Approach to Social Problems. By PAUL W. WARD. (Chapel Hill: University of North Carolina Press. 1931. Pp. ix, 126.)

This volume deserves careful reading. "I have tried," says the author, "to use these points as pegs upon which to hang a social philosophy"

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(p. vii). The result is stimulating, and the style most charming. Three elements are woven in: (1) the Deweyan approach; (2) the sketch of a Wardian social philosophy; and (3) commendation of specific proposals. The first element is excellent, the second suggestive, and the third inadequate.

Mr. Ward is an acknowledged disciple of Dewey. His interpretation of the master is at times brilliant, especially in Chapter V on "Situational Thinking in the Social Sciences." "This empirical situation never appears in [formal] logic; terms and relations appear, but the situation cannot" (pp. 103-104). To the reviewer, this sums up in one sentence Dewey's great contribution of a philosophy of approach which is a devastating refutation of dogmatism, absolutism, abstractionism (not abstractions as tools), and over-generalization (not generalizations as tools).

The reviewer does not, however, find in Dewey or in Ward any bright hope for a social science comparable in its practical results to physical science. "The experimental method" is an ambiguous phrase. It refers now to *logical* method, now to *operations* or *techniques*. As experimental logic, it offers invaluable guidance on how to be intelligent in *both* kinds of science. But there are differences between the study of social and of physical consequences which make the fruitful use of techniques much more difficult in the former than in the latter (cf. Dewey, *The Public and Its Problems,* p. 7).

Even so, the reviewer would be the last to discourage experimentation with new techniques, when it is done intelligently. Aye, there's the rub. For "the experimental method" is just now by way of becoming a shibboleth, and of perpetrating half-baked "scientific projects" upon innocent donors. Such observations apply to Mr. Ward only in so far as he fails to place needed emphasis upon the above distinction.

Mr. Ward's Deweyan "emphasis on consequences" (p. vii) may be turned against the "pegs" of his own social philosophy. One such "peg" is this: "Those who take the consequences of policies should choose policies" (p. 36). This is the key to his highly interesting interpretation of representative government. But he does not even attempt to predict the consequences of allowing industrial workers (p. 29) a voice in industrial policies. The "doctrine of the situation" (p. 101) suggests that it might work in one industry, but not in another. Mr. Ward might reply that one must always start with assumptions, and that he has merely made a tentative assumption of an end to work towards. Yes, but he *stops* there also! The point is not, however, meant as a serious indictment. For only the Mad Hatter could present a treatise on industrial democracy in a passing reference.

This criticism seems more just in the case of the specific proposals to

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which the author gives passing approval. Here he jumps at conclusions with inadequate analysis. Thus, he wants to have cabinet members appear in Congress. But he erroneously states that they now appear only before investigating committees (p. 30). This leads him to claim for the proposal that "suggestions for policy might be gained from sources *now unutilized*" (p. 31; italics are reviewer's). What about annual reports and testimony before legislative committees? He holds that "a premium would be placed on high-grade executives." It is just as plausible to say that a premium might be placed on department heads who could make a good speech and meet partisan attacks glibly. He omits other probable disadvantages which should be set off against his probable advantages. In short, he fails adequately to employ his own criterion for "all social policies and programs": "What concrete differences would the specific proposed change make in the existing order of affairs, and are they desirable?" (p. 101).

The book is full of sentences which deserve quotation. "The present is always an age of confusion" (p. 3). Here is a hint for reviewers: "Each writer must be taken in terms of his own meanings to be intelligible" (p. 5). If space allowed, numerous others could be added.

JAMES HART.

The Johns Hopkins University.

Reason and Nature. By MORRIS R. COHEN. (New York: Harcourt, Brace and Company. 1931. Pp. xxiv, 470.)

It is a pleasure amid the flood of books to turn to one of permanent importance. In those sections of this work which deal with the social sciences, Professor Cohen insists upon the existence of the field of subject-matter of these studies as something separate from those of biology and psychology; puts on one side Znaniecki's distinction between individual psychology as a natural science and social psychology as a social science; and insists upon the importance of hypothesis, abstraction, and the precise and non-popular definition of terms as methods in the development of the social sciences. He denounces the habit of talking vaguely about "tendencies" and "forces"—a habit which can only serve to obstruct scientific development. Peculiarly apposite is his approving quotation from Karl Bücher: "The only method of investigation which will enable us to approach the complex causes of commercial phenomena is that of abstraction and logical deduction: the sole inductive process that can likewise be considered, namely, the statistical, is not sufficiently exact and penetrating." "Social science," says Professor Cohen, "is the analysis or account of the abstract and logically repeatable aspects of social life," although "the process of distilling the essential law from

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social phenomena must be surrounded with many more cautions than the similar process applied to physical events."

Professor Cohen has little use for that type of theory, of which the writings of Lévy-Bruhl are representative, which attempts to excogitate a system of ethics out of the amassment of historic facts. The exponents of a science of history receive short shrift. On the other hand, the author seems to have leanings toward a science of ethics which leads him to redefine science in such a way as to include, not only the formulations of "the widest law of causal sequence," but also "a coherent system of judgments of human conduct." Consistently with this, while denying that individual volition is an adequate cause of large social changes, he considers that the social sciences are concerned with how men may "conform to social mores or norms," and with "how to choose the proper means or to eliminate conflict in our aims." There seems here to be a highly important ambiguity. I suggest that the social sciences are concerned solely with "how to choose the effective means for aims" of which the propriety appertains to the separate and non-scientific province of the ethical philosopher. I further suggest that there can be no science, exactly so called, of value-judgments, although there certainly can be an art, and perhaps a science, of casuistry or moral medicine. I am here assuming, with Bertrand Russell, that science, as distinct from philosophy, is not only the love of truth but, as a systematization of a body of verifiable knowledge, is stamped by that characteristic which Russell calls power-thought or control-thought.

Professor Cohen provides us with an interesting criticism (a reprint of an article first published in 1919) of political pluralism along the lines that the tyranny of one majority is better than that of many minorities, although it is dubious whether H. J. Laski would accept it as entirely just either to his present individualistic and federal position or even to his earlier one. No more than allusion can be made here to the magnificent work to be found in this volume, with its gem of an epilogue, which is one of the most striking constructive contributions in philosophy of recent years.

GEORGE E. G. CATLIN.

Cornell University.

French Political Thought in the Nineteenth Century. By ROGER SOLTAU. (New Haven: Yale University Press. 1931. Pp. 500.)

Mr. Soltau has produced a volume which is fully up to the level of the excellent series on political theory of which it forms a part. His task has been in many ways more difficult than that of his predecessor in the same series, Mr. Kingsley Martin, since the nineteenth century in French

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theory is a rolling moorland as deficient in intellectual peaks as the eighteenth century abounded in them. Renan and Victor Hugo are principally known for other things than for their political theory. The liberal thought of the first half of the century, represented by such men as Guizot and Thiers, was marked by opportunism rather than principles. Ecclesiastical social theory from De Maistre to Maurras (reference to Maritain is slight) constitutes a distinct thread, although it is highly important that its relevance to a general theory of authority and of the community should be appreciated in countries which tend to take churchly theory too lightly. If there is any criticism of this book, it is that the space devoted to St. Simon, Fourier, and Proudhon is all too brief. After Proudhon, "the one original thinker in French Socialism" is Sorel, although Mr. Soltau does not neglect the influences auxiliary to syndicalism such as the juristic writings of M. Duguit.

The chief service, indeed, which Mr. Soltau has performed is perhaps to call attention to the significance of Proudhon's work, that of "the greatest single creative mind among French political thinkers of the nineteenth century." Any student of contemporary currents of political theory will note how perennial individualism—fearful of the moral tyranny alike of state socialism and of the Communist dictatorship of the proletariat, and yet determined that democracy shall advance to its third stage in the realization of the principle of social accountability and social control in industry—is remoulding Proudhonian theory with its criticism of unearned wealth, its pluralism and federalism, its respect for individual conscience, and its indication of the "only way of escape from Jacobinism and Communism." Indeed, the main issue in political theory during the next twenty years will probably be between Marxists, with their Communist religion, and Proudhonists, with their libertarian reforming morality, in which struggle the influence of French and English socialism will probably be thrown on the Proudhonist side.

GEORGE E. G. CATLIN.

Cornell University.

Josiah Tucker; A Selection from his Economic and Political Writings. EDITED BY ROBERT L. SCHUYLER. (New York: Columbia University Press. 1931. Pp. 576.)

Until the appearance of this volume, most of us have been acquainted, if at all, with the ideas of Dean Tucker through the medium of several secondary and, as it now seems, somewhat misleading, accounts. One of the most interesting, if not most influential, of controversialists in eighteenth-century England, his writings deserved a better fate than is usually reserved for those who deal with questions of the moment. Tucker was,

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for nearly fifty years, involved in the discussion of problems religious, economic, and political. And although he is not a systematic thinker of the first rank, he did attempt to formulate a reasoned exposition and defense of his own opinions.

One of his most striking views was his confirmed "little-Englandism." He not only opposed further imperial expansion but also favored allowing many of the colonies then possessed by Britain to go in peace. In several pamphlets, especially one written in 1774, he urged that the Americans should be allowed to leave the Empire. He argued this thesis solely upon the basis of the economic welfare of England. For the various American arguments as to their "rights" he had no sympathy. The colonists he believed to be "a People more addicted to Chicane of every Kind, to Quirks and Quibbles in the Law . . . than any People upon Earth."

The democratic aspirations of certain men of the time he viewed with disgust and alarm. His own observations of English politics, particularly in connection with parliamentary elections in Bristol, led him to believe that the people were much better off if they had but a very slight share in the government. Except for religious toleration, he apparently entertained no liberal ideas. In his principal work on politics, *A Treatise Concerning Civil Government,* he devoted Part I to a most unfriendly analysis of Locke. He was actually answering Priestley rather than Locke, or, to put it differently, Locke's words rather than his meaning. Part II, "The True Basis of Civil Government," is an essay, singularly sterile for so vigorous a thinker, on the origins and form of government. He argued that men come together naturally, and that in any such gathering the fact of inequality is patent and all-important. He believed no one of the simple forms of government to be satisfactory and favored the mixed form on the English model. His only criticism of the existing English government was that under it the masses exerted too much influence, and he made several proposals for curbing their power. He was strongly opposed to a redistribution of seats in Parliament, partly because he thought that the cities were haunts of evil and that they already exerted too much influence.

An excellent introduction, a bibliography, and a usable index make the volume a model for reprints of this kind.

B. F. Wright, Jr.

Harvard University.

Far Eastern International Relations. By Hosea Ballou Morse and Harley Farnsworth MacNair. (Boston: Houghton Mifflin and Company. 1931. Pp. xvi, 846.)

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Japan's Special Position in Manchuria. By C. Walter Young. (Baltimore: Johns Hopkins Press. 1931. Pp. xxxiv, 412.)

The International Legal Status of the Kwantung Leased Territory. By C. Walter Young. (Baltimore: Johns Hopkins Press. 1931. Pp. xvii, 249.)

Japanese Jurisdiction in the South Manchuria Railway Areas. By C. Walter Young. (Baltimore: Johns Hopkins Press. 1931. Pp. xxii, 332.)

The End of Extraterritoriality in China. By Thomas F. Millard. (Shanghai: A.B.C. Press. 1931. Pp. 278.)

This group of five books forms a very convenient set to be recommended to anyone desirous of understanding the background of the crisis in Manchuria which now commands the intense interest and attention of the world. The five books, taken together, cover all the phases of the problem of the Far East.

In *Far Eastern International Relations,* one gets the whole story of modern relations between Europe and America and the Far East in the convenient form of a textbook for college students. The greater part of the book is given to the history of Chinese relations with the West, but the story of Japan's opening, restoration, and modernization is included, together with events and relationships in Siam and Korea. Professor MacNair rightly says in his preface: "It is safe to say that no other area presents as many complexities and conflicting policies as does the Far East. In no other part of the earth are there at the present day such potent and dangerous possibilities. Concerning no other area does there exist such abysmal ignorance or such flow of popular emotion and sentiment." With the impartial spirit of a trained historian, Prof. MacNair has summarized his material, which is in large part a condensation of Dr. Morse's three-volume work, *The International Relations of the Chinese Empire.* The scientific scholarship of the co-authors guarantees the accuracy of the account presented. It is significant that the present volume is a second edition, the first having been published in Shanghai in the autumn of 1928, but withdrawn from sale within a month of its appearance owing to pressure brought on the Chinese publishers by certain members of the government then in control at Nanking. In no other available volume can a reader secure the general story of the impact of the West upon the Far East in so accurate or so condensed a form in relation to the present situation.

The three volumes of Mr. C. Walter Young, under the general title *Japan's Jurisdiction and International Legal Position in Manchuria,*

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represent a detailed and specialized study of the legal aspects of Japan's claims in Manchuria. The author's extensive studies in Manchuria and other parts of the Far East, where he lived and worked as the first Willard Straight fellow in Chinese studies, and his previous volume on the international relations of Manchuria, indicate his qualifications as a specialist in the Manchurian field. In these volumes, he has wisely limited himself to a discussion of the international legal status of Japan's claims to a special position in Manchuria in general, of her rights in the Kwantung leased territory, and of her jurisdiction in the South Manchuria Railway areas. Mr. Young has begun his extensive study of the Manchurian problem at the right point. A determination, so far as possible, of the legal status of Japan's claims from the viewpoint of the best international legal opinion and practice of the day should form the starting point for any discussion of the complex and conflicting interests and rights that are involved in what is known as the "Manchurian problem." The reader will find in these volumes a calm, non-sentimental, and unemotional factual survey of the legalities involved in the Manchurian situation.

The careful references given, not only to official documents, but to recorded conversations between the envoys engaged at various stages in the international negotiations resulting in those documents, make these volumes a necessary addition to the reference library of any one seriously concerned with either Far Eastern problems or the questions of international relations generally. On the whole, the writer has succeeded well in presenting the essential facts of negotiations between several nations extending over some thirty-five years. At some points, the story seems to be presented in a style that is somewhat repetitious, with unnecessarily long comments by the writer, who clearly writes with facility and is easily led on by the fluency of his own flow of language, but there are only a few sections that seem unduly long. However, the reviewer would raise the question whether it might not be of considerable advantage in a subsequent edition to summarize the material of each volume in a special legal "brief" which, in a condensed form, would give the key decisions in the whole process of negotiations.

The author's conclusions may be summarized in a general way as follows: The "special interests of Japan in Manchuria" have not been recognized by other nations except as the specific rights and privileges which were obtained by the Japanese government from China and from Russia by way of international agreement. Moreover, upon the ratification of the Nine-Power Treaty of February 6, 1922, all claims to spheres of interest in China ceased to have any legal validity.

The End of Extraterritoriality in China, by Mr. Millard, is a con-

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venient summary of the actions recently taken by the Chinese government with regard to the abolishing of extraterritoriality in China. The writer, Dr. T. F. Millard, is adviser to the government of the Republic of China, but he has maintained a non-partisan attitude in presenting the documents from the Chinese side that must be considered in any study of the problem. Dr. Millard gives a suggestive summary of important dates in the history of foreign concessions or settlements in China, and in his appendices presents the latest constitution of China, new Chinese criminal codes, recent agreements made by various powers with China regarding judicial jurisdiction, and a résumé of the history of each "settlement"—material necessary for any study of the problem of the revision of the treaties between China and the other powers.

The notable success of Chinese diplomacy within recent years in recovering for China rights which in earlier decades were, in view of the then existing conditions, necessarily taken over by foreign powers, is a suggestion of the course of events today. In the light of this prospective eventual release of China from all the inhibitions to the free exercise of her sovereignty, it is well to reconsider the material presented in Mr. Young's volumes. The tendencies indicated by the facts presented by Mr. Millard are sure to affect the Manchurian problem and all other questions of China's relations to other nations. May it not be probable that Japan, in attempting to use old-fashioned, imperialistic methods, before the world has expressed more effectively its disapproval of such, is simply storing up for herself trouble in the years to come? Perhaps she is now sowing in Manchuria seeds from which she and the world, which has so far failed to implement effectively the instruments devised for international peace, will reap a whirlwind of hate and war. The reading of these five volumes together will give to every thoughtful person a new sense of the importance for the world of events now taking place in far-away Manchuria.

LUCIUS C. PORTER.

Harvard-Yenching Institute.

The Holy Land Under Mandate. By FANNIE FERN ANDREWS. Two volumes. (Boston: Houghton Mifflin and Company. 1931. Pp. xvii, 361; ix, 436.)

This book begins as a travelogue but concludes as a well-balanced exposition of the political situation in Palestine. In the course of two bulky volumes, the author has included an enormous amount of information about Palestine. This information ranges from geographic, climatological, historical, and cultural facts about modern as well as ancient Palestine, to expositions of political opinions, official pronouncements,

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and judicial decisions bearing upon the contemporary situation. Much of this material is organized according to no very definite system. The earlier chapters seem to consist of the author's travel notes, supplemented by subsequent exploration into encyclopedias, guide books, and documents. One is a little surprised to find fairly complete expositions of the Urtas-Spring case and the Stamp case, bearing upon the legal position of the mandate, in a chapter dealing with "The Life of the Country" and immediately following some observations on the water famine. It is also somewhat unexpected to find general expositions of the legal organization of the country hanging as addenda to character sketches of the leading British personalities and accounts of the author's conversations with them. It must be confessed, however, that this rather haphazard arrangement may convey to the reader a more realistic sense of the atmosphere in Palestine than might have been possible by a more systematic plan.

When the author launches into her main problem, the conflict of Zionism and Arab nationalism in Palestine, she becomes more systematic. Here the reader can find a brief history of Zionism, of the Balfour Declaration, and of Jewish activity in Palestine. He can find a history of the Arab position in Palestine, of their attitude toward Zionism and the controversies before the League of Nations, particularly those relating to the "Wailing Wall." The concluding chapter on British policy and the future contains an abstract of the report by Sir John Hope Simpson and of the report by Lord Passfield. But in this, as in the preceding chapters, the author confines herself to exposition. The attitudes and arguments of all controversialists are stated impartially, but the author does not attempt to judge between them. The book ends with the rather pessimistic opinion that the peoples of Palestine "are farther apart today than at any time during the eleven years of the mandate," that there is "no adequate criterion for presaging the form of independence which may ultimately develop from the Palestine mandate," and that "the world longs for a pacified Holy Land."

The book is, therefore, less a contribution toward a solution of the problem of Palestine than a collection of materials useful to the investigator. Many documents are quoted in the text. Appendices contain the most important documents in full. There are many illustrations, considerable bibliography, and sufficient realistic description to give the reader a sense of the atmosphere of political controversy in Palestine. With this abundance of material, to ask for more may seem ungenerous. But the reviewer would have been glad for an exposition of the political parties and factions among both the Jews and the Arabs in Palestine, as well as the varieties of opinion within world Zionism. The impression

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given of a unified Jewish opinion facing a unified Arab opinion is perhaps hardly justified by the facts, and leads to an unduly pessimistic estimate of the future.

QUINCY WRIGHT.

University of Chicago.

The Problem of the Twentieth Century. By DAVID DAVIES. (London: Ernest Benn, Limited. 1930. Pp. xviii, 795.)

The present volume constitutes the best treatment in the English language of the most important problem in the science and art of government in our day, namely, the problem of organizing and operating a system of sanctions in international government. Mitrany's little book was surer in its touch; Bruce Williams' admirable treatment of one aspect of the problem was more scholarly; but Davies' treatment is more comprehensive and exhaustive, and at the same time better balanced, than anything we have had hitherto. It is likely to be superseded very soon, for what the establishment of representative government, constitutional democracy, or parliamentary control was for the nineteenth century the problem of sanctions in international government is for the twentieth, and a correspondingly extensive literature is to be anticipated. But for the moment this volume stands alone.

The author treats his subject in a painstaking and systematic manner. He begins with an analysis of the problem, proceeds to an historical review of the problem in the international field, dips back into the evolution of sanctions in government as such, and discusses the problem in relation to sovereignty, national defense, and international rivalry. He then comes to a discussion of the types of weapons in use in modern war, and to a distinction which he is going to use later as the basis of his main thesis. There follow five chapters on the heart of the problem, i.e., the international police force; three or four on relative values; and five on the ways in which the problem is viewed by Germany, Britain, France, America, and Japan. Appendices contain documents.

The author is not, apparently, a trained political scientist, and portions of his treatment will seem amateurish and unsure. The zeal of the reformer here and there mars the quiet and clarity of the study. And there is a good deal of repetition in the central chapters. But on the whole the survey is thorough, balanced, and systematic.

It seems to the reviewer that the central thesis of the work is unsound and also superfluous. This thesis is that a distinction can and should be made between the older types of weapons, such as rifles and swords, and recent types of weapons, such as machine guns, tanks, and planes, and that national armies should be denied the later, aggressive, or more

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effective, weapons, which should be reserved to the international force. But the discussion of the difficulties of organizing any international force, the suggestion for a relatively small central international force for use promptly in minor crises—promptly and without doubt or debate, supported by coöperative international military action as far as necessary (much on the order of things in the United States), is very good. The comments on British and American policy are excellent, those on the French position not so clear. Strong or weak in its treatment, the volume poses forcibly and fully the unescapable, if as yet insoluble, central problem of international government in a way which should profit all American readers and students of political science.

PITMAN B. POTTER.

University of Wisconsin.

Die Nationalitäten in den Staaten Europas. EDITED BY DR. EWALD AMMENDE. (Wien-Leipzig: Wilhelm Braumüller, Universitäts-Verlagsbuchhandlung. 1931. Pp. 566.)

The problem of minorities is undoubtedly one of the most serious that the world has to face. There is much bitterness involved in it, and consequently there are floods of literature. Not many impartial and objective works have been written; most of the others can be divided into two general groups: those representing the viewpoint of the states and those dealing with the woes of the minorities. A true picture of the situation, so difficult to form, lies somewhere in between or in a synthesis formed by an impartial observer.

The present work, published at the instigation of the Fifth Congress of European Minorities held at Geneva on August 26-28, 1929, contains reports on the conditions of individual minorities in Europe, written, according to the editor, by leaders of the minorities groups, who, however, are not named. Hence it must be observed that it is questionable whether they are the acknowledged leaders of their groups; also that only the groups represented at the Congress are considered. Thus the work really does not deal with all European minorities, among those omitted being the Polish minority in Czechoslovakia, the Slovak minority in Hungary, all Greek, Albanian, Turkish, and Russian minorities, etc. Altogether, forty minority groups, belonging to fourteen nationalities and living in fourteen states, are here represented.

In addition, we must be aware of the fact that all these reports were prepared especially for the Congress. It is natural that the Minorities Congresses should be more interested in calling international attention to the problem than in making a scientific and impartial study. The result is that in some reports more attention is paid to the points which

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might arouse the sympathy of the reader than to a description of the general situation of a minority. It must be said, however, that some chapters are quite fair and objective in their treatment.

The book divides the minorities into four geographical spheres: northeastern Europe, which covers the Baltic States and Poland; middle Europe, with Denmark, Germany, Czechoslovakia, Austria, and Hungary; southeastern Europe, with Yugoslavia, Rumania, and Bulgaria; and, finally, southern Europe, with Italy and Spain. It is impossible to characterize the status of each minority. But if we ascertain the status of the largest and most numerous European minority, the Germans, we see that this minority considers its situation satisfactory in no state and that the chief complaints are directed against Poland, who has been harshest in her treatment of minorities, and Italy. The German minorities, however, generally base their demands on the minorities treaties and the internal legal *status quo*. The most exaggerated and irritating demands are presented by the Magyars: the least and most moderate, on the other hand, by the Jewish groups.

The editor himself feels that the problem has not been settled in most of the states, and that no revision of the border-lines will ever succeed in abolishing the problem. The reviewer concurs heartily in this sensible viewpoint.

In spite of all its tendencies, its gaps of treatment, and its omission of some important minorities, this book has decided value, especially for its presentation of the problem as the minorities themselves see it. Evidently there is still much injustice, dissatisfaction, and oppression of minorities in Europe—a fact which has tremendous influence on internal and international politics.

JOSEPH S. ROUCEK.

Centenary Junior College.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Liberal Party in America, by Samuel Harden Church (G. P. Putnam's Sons, pp. vi, 124), presents a program for a new party that is to "redeem America." The inception of this party grew out of the last gubernatorial election in Pennsylvania when it was discovered that the Republican candidates were much too dry for some Republicans. This wet group accordingly sponsored the Democratic standard bearer, Hemphill, casting their ballots for him in the Liberal party column. The present volume is an effort to set forth the principles and platform of this

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new "party" as a preliminary to operations in the coming campaign. There are planks denouncing prohibition and blue laws, but on the other issues the author's position is not so clear. He favors "the reduction of armaments to the lowest point consistent with national safety;" declares that "the fundamental causes of our business troubles must be treated in a fundamental way;" and advocates leaving the farmer to find by experience the solution to his problem. The platform is by turn banal and bizarre, and its proposals scarcely warrant serious attention.

The Secession Movement, 1860-1861, by Professor Dwight L. Dumond (Macmillan, pp. vi, 294), is a detailed study of the constitutional doctrines of the separatist movement in the Southern states immediately preceding the Civil War. After a short summary of the ideas accepted in the South in 1860, the author takes up in chronological order the various steps in that movement. Relying principally upon contemporary newspapers and the records of proceedings in Congress, the state legislatures, and the various conventions of these two years, he discusses the break-up of the Democratic party, the new political alignment in the South, the first examples of secession, the attempts at compromise, and the final failure of compromise to prevent the secession of the more conservative Southern states.

Mr. Paul V. Betters' *Federal Services to Municipal Government* is an enumeration of advisory agencies in the federal government published by the Municipal Administration Service (pp. 95). Since it makes no pretense at analysis or evaluation of this wrinkle in the problem of federalism, readers who hope for any continuation of Mr. William Beard's thought-provoking article on "Government by Special Consent" published in this REVIEW for February, 1930, are doomed to disappointment. Presumably the booklet was issued to aid city officials who might want federal help. If so, a directory of the federal advisory agencies, with addresses of officials to whom to write and with estimate of the probable cost, would have been more useful. The Department of Commerce—notably through the bureau of standards—leads the list of agencies which furnish advice or compile statistics of value to municipalities. The Department of Agriculture is probably second, while the public health service in the Treasury Department and the bureau of investigation in the Department of Justice are of considerable value.

In *Wheat and Politics* (Rand Tower, Minneapolis, pp. 270), J. W. Brinton sets out to expose the "rascality in leadership and traitorship to the great cause of Agriculture" on the part of the Federal Farm Board. The attack is directed chiefly against the marketing agencies that the

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Board has recognized and financed. The author regards these bodies, not as bona fide coöperative institutions within the intent of the Agricultural Marketing Act, but rather as selfish private corporations managed by professional promoters. He would abolish the present system of farm relief and set up the "Brinton Plan." This scheme would guarantee the farmer two-dollar wheat and enable the government to take over as a "production tax" the surplus crop. This excess would be dumped on the foreign markets or distributed as charity in this country.

The Negro in American National Politics (The Stratford Company, pp. 148), by William F. Nowlin, deals briefly with the activities and position of the negro in Congress, in national party conventions, and in presidential campaigns. Office-holding is regarded by the author as of foremost importance in evaluating the political significance of the negro. The book deals with facts rather than with fundamental considerations as to the place of the negro in politics. The conclusion seems to be that if the negro is to achieve power, he must needs adopt the tactics of the Anti-Saloon League.

FOREIGN AND COMPARATIVE GOVERNMENT

Fundamental Civil Rights and Equality Before the Law (*Základní Práva Občanská a Rovnost Před Zákonem*, in Czech), by Jaroslav Krejčí (*"Moderní Stát,"* Prague, pp. 215), is very interesting for the American reader, as it shows how American views regarding civil rights, especially the clauses relating to equality, have influenced markedly the legal theories of the new republican constitutions of Europe. On the other hand, in several states like Germany and Czechoslovakia the principle of equality has little meaning, if any at all. Thus the theory and practice of German courts has been that the principle of equality is binding on the executive and judicial departments, but not strictly upon the legislative. Hence no law is unconstitutional solely because of depriving the citizens of the equality principle. The Supreme Administrative Court of Czechoslovakia went a step further and stated that the principle of equality is not strictly binding on the executive branch of the government, being only a political program without legal importance. On the other hand, the Swiss practice approaches the constitutional interpretations of the United States courts, recognizing in the principle of equality a limitation on all three branches of government. Lately there have appeared in Germany numerous legal authorities (Triepel, Liebholz, Kaufmann, etc.), who, following the example of the Supreme Court of the United States, contend that equality is binding also on the legislative power, and their teaching is gradually being adopted by the German courts. It should be noticed that in Europe the influence of legal theories

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on the decisions of the courts is stronger than in the United States. The present volume deals critically with the evolution of these views regarding equality in France, the United States, Switzerland, Germany, and Austria. As far as the equality dictum of the Czechoslovak constitution is concerned, the author is trying to prove that it is binding on all branches of the government, and bases his contention on comparative material, especially on American and Swiss judicial decisions, and on the provisions of the minorities treaties. He, furthermore, presents concrete maxims which should be followed, basing them really on the decisions of the Supreme Court of the United States in such cases as Yick Wo v. Hopkins, Barbier v. Connoly, Strauder v. West Virginia, etc. It is necessary to remark that the regular Czechoslovak courts do not have the right to examine the constitutionality of laws. This power can be exercised only by a special "Constitutional Court," an academic body which can act if asked for a decision by the House of Deputies, the Senate, the Diet of Carpathian Russia, the Supreme Court, the Supreme Administrative Court, or the Electoral Court. Such requests must be made within three years of the promulgation of the law in question. In point of fact, not a single law has as yet been examined; hence the provision is of only theoretical importance.—J. S. ROUCEK.

Among the flood of new political publications on India, *Come with Me to India; A Quest for Truth Among Peoples and Problems* (Scribner's pp. 467), by Patricia Kendall, is noteworthy for its striking way of belying the apparent harmlessness of its title. Significantly enough, another American authoress has felt called upon to write a sweeping apology for the British dominion in India. In a way, she does it comprehensively enough. The curious reader is led firmly and with gusto through the thicket of Indian geography and history, including a somewhat unnecessary life of Mohammed as a means of elucidating Mahammedanism in India; all this serving to build up the thesis of India's utter incapability to govern herself. Every detail in the author's extensive account of Indian civilization past and present is made to prove that the surrender of Indian administration to the Indians will be fatal for India, England, America, and the world at large. The author is skillful in painting the canvas of Indian misery and of certain dangerous social institutions, like untouchability, child-marriage, or purdah, in the most brilliant colors; she is, justifiably to some extent, critical in exposing Gandhi as the leader of extreme and also reactionary nationalism; but she is, not quite innocently, one may assume, omitting all evidence against British rule, as e.g., the long-lasting neglect of agriculture, the incidental destruction of Indian crafts by the mass-importation of English goods, the totally insufficient staffing and apparatus of higher education, and the blunder of

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putting off to the last a gradual Indianization of Indian administration. She sees correctly (and with ample extracts from authoritative sources) grave defects of the social tissue. But she seems blantantly and naïvely unaware of any alternative to the standards of Western civilization; her confident comments on the absence of Indian contributions to mankind, as she understands them, border on the ridiculous. Because she virtuously recoils from what she considers the horrid ornamental profanities of phallic worship (ignoring the profundities behind them), there must be something wrong with India. Because Indian history is shown to be a series of blood-stained happenings, it is deemed proper to prevent history from repeating itself. The great problem of whether Western standards of civilization and government can be applied in India by the pressure of the outside world—the real crux, fundamentally a question of political ethics—at no point worries the author. She solves it, in a pseudo-realistic way, by appealing to the world's instinct of political and economic self-preservation. Bolshevism and the crashing of markets are to follow the withdrawal of the British from India. But this is only one side of reality. The danger of this book, with its formidable mass of information, much of which is sound, is the wood-cut manner of presentation. Hoary prejudices are stabilized and wholesome doubts anxiously avoided. Of a higher fairness, there is no trace.—W. H. KRAUS.

The outstanding question of students of the Soviet system is how the Bolsheviks manage to finance their gigantic schemes of industrializing a backward country without the aid of foreign capital. Certain foreign economists have attempted an answer, but with qualified success because of the inaccessibility of source materials. Now comes a Soviet exposition, in a volume entitled *Soviet Policy in Public Finance* (Stanford University Press, pp. 470), by Gregory Y. Sokolnikov (formerly commissar of finance, now ambassador to London) and associates of his choosing. The work is edited by Professors Hutchinson and Plehn, of Stanford University, who disassociate themselves from the "ex parte statement," and explain the enormous difficulties of finding English equivalents for many Soviet terms. The authors present a picture of pre-revolution finance in Russia, and carry the exposition through the Civil War and the New Economic Policy to the advent of the Five-Year Plan. The central theme is the function of the budget in the socialistic financing of planned economy. But one looks in vain for a rational explanation of the famous "pumping" process by which the national income has been redistributed, drawing capital from agriculture and the private sector generally, and expending it in heavy industry and the socialized sector, to further the social revolution and to industrialize the country at the same

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time. This process has necessitated excessive centralization of the financial system. In an extremely interesting conclusion, Sokolnikov predicts a decentralization of the system after the purposes of the transition period are accomplished, which would involve curtailment of the state's share in financing national economy, and would give greater importance to the budgets of the republics and cities, as well as to economic units in the huge machine. While this volume throws considerable light on past problems of the Soviet financial system, it does not help the reader understand the recent developments, the attempt at socialistic bookkeeping in 1930, and the return to the old cash accounting basis in 1931, in the effort to strike a balance between central dictation of planning and the initiative necessary to enable trusts to fulfill their quotas of the plan. Nevertheless, the Soviet authors do give an authoritative account, from their point of view, of socialist financing of a state in business.—B. C. HOPPER.

Since the government of the Ottoman Empire was centered in the Sultan, his place of residence was of prime importance. The Great Palace in Istanbul served thus for about four hundred years. Dr. Barnette Miller, in *Beyond the Sublime Porte* (Yale University Press, pp. xxv, 281), reveals as never before the history, plans, artistry, and functions of the building and grounds. Much new light falls upon the nature and working of the government. A large proportion of the high officials of Turkey were trained in the unique Palace School; the central council or divan met regularly on four days of the week, ambassadors were received and janissaries paid, the most sacred relics of Islam were (and still are) cherished, and conferences and intrigues were carried on which not merely determined the succession of rulers, but decided the most important matters of internal welfare and international relations. The author's reliability is supported and the reader's convenience assisted by adequate plans, illustrations, notes, glossary, chronology, bibliography, and index.—A. H. LYBYER.

Beginning substantially with the Balkan Wars and the partition of the Ottoman Empire in 1913 and concluding with the treaty of Lausanne in 1923, and providing brief summaries antedating and following this period, H. N. Howard, author of *The Partition of Turkey, 1913-1923* (University of Oklahoma Press, pp. 486), bases his treatment upon the extensive use of archival sources and documents of Great Britain, France, Germany, Italy, Austria, Russia, Turkey, and the Balkan countries. The book is successful from both the academic and literary viewpoints. The amount of research is evidenced by ninety-two pages of footnotes and references. An excellent classified bibliography and three maps are added.

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The volume will be found valuable by those interested in the problems of the Balkans and the Near East.—JOSEPH S. ROUCEK.

A new publication by K. Loewenstein, who may be considered one of the few really thorough German connoisseurs of English parliamentary institutions, can always be expected to be a careful and capable piece of research. In his latest study, *Erscheinungsformen der Verfassungsaenderung* (*Beiträge zum Offentlichen Recht der Gegenwart,* Tübingen, 1931, J. C. B. Mohr, 308 pp.), the learned author restricts himself to the analytical treatment of the various formal problems arising out of and around Article 76 of the Weimar constitution. This article, in essential contrast to the American fundamental law, provides a qualified *legislative* procedure for constitutional changes. Basing his inquiry on ample evidence from all departments of government, the author gives a dogmatic survey and analysis of all the various direct and indirect forms of modifying the constitution, with a view to purifying constitutional theory and also constitutional practice. The study, which, in its wealth of technical argument, is not wholly enjoyable reading for the non-German political scientist, may be considered representative of the best "positive" trend in contemporary German constitutional jurisprudence.—W. H. KRAUS.

Professor Roger H. Soltau's *French Parties and Politics* (Oxford University Press, pp. 88) has reappeared with a supplementary chapter covering the years 1922-30. It is a matter of regret, considering the obvious merits of this little volume, that errors in the original text have not been corrected. The author still alludes to the constitutional "law" of 1875, styling it "a brief document;" to the "attempted" dissolution of 1877; to the absence of any legal provision for the collective responsibility of the cabinet; to Combes' succeeding Waldeck-Rosseau as "president." His confused statement of the actual powers of the president stands without change. In the supplementary chapter, he discusses with some penetration the major political problems of the third decade of the century. Here one finds too little connection with the earlier chapters, being left with the impression that the Catholic party, *Action Libérale Populaire,* still survives and that elections are still conducted under the law of 1919. —E. M. SAIT.

Soviet Russia; A Living Record and a History (Little, Brown and Co., pp. ix, 486), by William Henry Chamberlin, has appeared in a revised edition. The author has added two entirely new chapters dealing with the spread of collectivization in agriculture and the results of the Five-Year

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Plan in economic and social fields. The chapter on revolutionary personalties has been rewritten, and other statements have been brought up to date. Mr. Chamberlin's volume holds its place as one of the soundest and most generally useful studies of sovietism.

Western Influences in Modern Japan (University of Chicago Press, pp. xii, 532) is a collection of essays by Dr. I. Nitobe and other Japanese writers, originally prepared in 1929 for the enlightenment of visiting delegates to the Institute of Pacific Relations at Kyoto. The chapters on art (Professor Dan), religion (Professor Anesaki), politics (Professor Yoshino), and "Two Exotic Currents in Japanese Civilization" (Dr. Nitobe) convey information of permanent value. The others are concerned chiefly with the presentation of Japan "as she would be seen."

INTERNATIONAL LAW AND RELATIONS

The United States Government Printing Office has published the first two volumes of *Treaties and Other International Acts of the United States of America,* edited by Hunter Miller (pp. 201, 662). There are three forms in which treaties of the United States are now generally available. The Malloy edition (including the two volumes which appeared in 1910 and the supplementary volume of 1923) prints English texts alone; it is the most complete single collection available. Treaties of the United States are also printed in the Statutes at Large; the bound volumes, which appear now every two years, include with the English texts some foreign language texts. The Treaty Series, commenced by the Department of State in 1908, consists of separate treaty prints in pamphlet or slip form, which now exceed 800. The limitations and inconvenience of these sources have prompted Mr. Miller, editor of treaties in the Department of State since October, 1929, to begin an edition which "will meet the needs of officials, of scholars, and of those interested in the international relations" of the United States. Volume I is issued in a preliminary form, subject to revision before the entire edition is completed. It contains introductory material, including a plan of the edition, and lists and tables classifying for chronology, subject matter, etc., the documents to follow; in revised form, it will include an index to the entire edition; it contains no treaty texts. Volume II covers the period from 1776 to 1818, and contains complete and literal copies of the first forty treaties to which the United States was a party. Volumes III-V, now in preparation, will cover the period down to December 31, 1930. The collection is planned to include all international agreements submitted for the advice and consent of the Senate, whatever those agreements may be called, provided they have at any time been in force; numerous international

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acts and agreements not so submitted, generally described as "executive agreements;" related and extrinsic documents, such as treaty maps, reservations or understandings referred to in an instrument of ratification; war-loan and debt-refunding agreements; arbitral awards and joint resolutions of Congress which have, or purport to have, international effect territorially. It is only a slight criticism, but it is perhaps unfortunate that rigid adherence to that criterion has excluded such documents as the Geneva arbitral award of 1871 and the Postal Union agreements. In every case, the document is reproduced in the original language or languages; and if there is no original text in English, an official translation is printed. Appended notes are of a textual or procedural character. Annotations and comments will appear later in separate volumes. For convenience, only a serial number, 1, 2, etc., is assigned to each document; Volume II contains Documents 1-40, Volume III will contain Documents 41-92. The order in which the treaties appear is determined by the dates of their signature. Relevant dates, such as those of the signature, ratification, proclamation, etc., are given in a headnote. The continuity of arrangement of the present edition is a distinct advantage over the mixed alphabetical and chronological arrangement followed in Malloy. This feature also makes it more usable for reference to treaties of the United States generally than the Statutes at Large, which are in some thirty volumes with no general index. The Treaty Series and Executive Agreement Series of the Department of State will remain valuable for reference to very recent agreements. For general reference, however, the present edition will largely replace previous collections.—A. E. HINDMARSH.

One may agree or disagree with the estimate of the relative importance of the events covered in the *Survey of International Affairs, 1930* (pp. ix, 605), issued under the direction of Arnold J. Toynbee, of the Royal Institute of International Affairs, assisted by V. M. Boulter, but one cannot say that disarmament, the affairs of the Middle East, and the economic changes were not of great importance in 1930. The Briand plan for closer European union, affairs in southeastern Europe, changes in American attitude toward countries to the south, and settlement of disputes among South American states were significant, but have been somewhat overshadowed by later developments. Many of the topics treated form a background for events now assuming central significance in world affairs. This is particularly true of the treatment of the economic tendencies since 1918, and of German reparations and economy. The mandate questions of Asia Minor relate to a period since 1928, and the American affairs relate to about the same period. To any of the subjects

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treated, the introduction to Part I (pp. 1-31) may serve as a preliminary survey. Certain pages (333-360) seem, when read with current history in mind, to be referring to a period when domestic problems in China were of main importance. The *Survey of International Affairs* becomes more serviceable with the companion volume, *Documents on International Affairs, 1930* (pp. xii, 264), edited by John W. Wheeler-Bennett. This is the third of these volumes of documents issued by the Royal Institute of International Affairs. These are not necessarily officially binding documents in the technical sense, but of explanatory and interpretative value, such as speeches and communications. The general documents relate to subjects such as the reparations conference of 1930, the London Naval Conference, and the League of Nations. Some special matters concerning Europe, America, Asia, and Africa are treated. Later events have changed the importance of these documents, but this picture of relative significance in 1930 is worth preserving, even if the perspective may seem to some to be a little distorted. It is particularly evident in these documents that British influence is not merely European. A forty-three page appendix comprising a "Chronology of Treaties" shows the rapidity with which the world is becoming internationalized. These annual volumes, under able editorship, are very valuable.

The reviewer knows of no more graphic or interesting survey of the factors involved in the peace of Europe than is presented by Frank H. Simonds in his new book, *Can Europe Keep the Peace?* (Harper & Brothers, pp. xiii, 360). The author drives home his arguments by apt comparisons with hypothetical American parallels. In his conception, Europe is disturbed by a "war" no less real than that existing fourteen years ago, except that the weapons are now economic and political. "The war which they had proclaimed was to end war seemed to have become only a prelude to the next" (p. 48). The author knows how to turn a phrase. For example, "the task is . . . not to make the world safe for democracy, but democracy safe for the world" (p. 352). But turning phrases sometimes leads to amazing paradoxes. For instance, "the world hope for peace remains centered in Geneva" (p. 260), yet "in post-war Europe, a stupendous pantomime of peace has been acted at Geneva . . . and behind the façade of Geneva, the statesmanship of Europe continues to function in the traditional manner" (p. 238). A rather gloomy picture is presented of Europe divided into two camps, one in favor of maintaining the status quo established by the Paris treaties and the other in favor of their revision. The British and American policy is peace without responsibility; the French, peace with security; and the German, peace with revision. And "these three . . . are irreconcilable" (p. 249). Hence

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all experiments in peace have failed. This pessimism leaves one quite unprepared for the author's final answer to the book's question. Idealistic solutions must be abandoned in favor of "a policy of constructive realism" (p. 345); therefore, back to Locarno. His pessimistic tone, however, may perhaps be discounted to some extent by his frank admission that five years ago he wrote a book under a "somewhat rash title," *How Europe Made Peace Without America.* Who knows but that he is here, by "rash" pessimism, compensating for his former "rash" optimism? —HERBERT WRIGHT.

The United States and Disarmament, by Benjamin H. Williams (McGraw, Hill, pp. 361), gives an account, with comment, of the steps taken by the United States to reduce her armaments by agreements with other nations. The writer is an internationalist and worshipper of big business who believes that the League offers adequate security. His point of view may be indicated by a few quotations. "The trend of the times is away from that fiery nationalism which is so destructive" (p. 58). "Powerful states, whose navies are a threat to peace upon the seas and whose armies cause alarm upon the land, are unfit for success in the dawning age of internationalism" (p. 61). "The successful international banker has found his interests to be emphatically on the side of an intelligent internationalism" (p. 6). In a chapter devoted to an attempt to refute Mahan's doctrines as to sea-power, which he does not seem to understand very well, the author says that Mahan was writing, "not for abstract truth, but for argumentative purposes, . . . facts . . . are marshalled predominantly on one side" (p. 16). It certainly may be said of the author's work that he is writing for "argumentative purposes." He is sometimes inaccurate, as when he says (p. 5) that Germany was the greatest prewar spender for prospective wars, whereas it was the British Empire (see *Statesman's Year Book,* 1910-11-12-13-14). In short, the author believes that the growing economic relations of the world and friendly connections through the League already justify us in generous disregard of political differences and of armaments as a source of safety.—W. L. RODGERS.

The Economic Uses of International Rivers (London, P. S. King & Son, pp. 224), by Herbert Arthur Smith, represents a very important first step, as far as English books are concerned, in the attempt to develop a working principle to govern the use of international waters. The first two chapters contain quite fine analyses of the problem and of the relation to it of the principles of private law. Here the author defends the practicability and justice of the theory of the equitable division among the riparian states of the benefits (navigation, irrigation, power, and other uses) to be derived from international rivers. By far the largest

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portion of the book is devoted to a consideration of fourteen interstate controversies, more than half of these relating to questions which have arisen within the United States or have concerned it. As might be expected, considering the brief space which could be devoted to so many complicated cases in so small a book, these are treated often rather incompletely and in some respects inaccurately. The Rio Grande and Colorado River controversies suffer especially in these respects. Long appendices (pp. 159-221) contain digests of treaty provisions and diplomatic correspondence dealing with the subject.—J. Q. Dealey, Jr.

The collapse of Cuban prosperity has touched American life at so many points that the appearance of Dr. Philip G. Wright's scholarly study, *The Cuban Situation and Our Treaty Relations* (The Brookings Institution, pp. xiv, 207), is most timely. After briefly sketching the background of the permanent treaty embodying the Platt Amendment, and indicating its effects in stimulating American investment in Cuba, Dr. Wright analyzes the results of the reciprocity treaty. In its early years, when the United States took substantial imports of sugar from countries other than Cuba, as well as practically the entire Cuban output, the treaty was of distinct benefit to Cuba. As a result of its rapid growth, however, the Cuban sugar industry came to forfeit any benefit for itself from the treaty after 1913, and at the same time largely nullified the benefits which other industries might have received. "Cuba's imports have risen and fallen with remarkable fidelity in proportion to her purchasing power as evidenced by total exports," especially by sugar exports. Although in its early years the treaty increased the proportion of Cuban imports which came from the United States, that proportion has decreased since 1921, in part at least because of the high level of American tariffs. After a brief survey of the attempts which Cuba has made to solve her economic difficulties, Dr. Wright concludes that her position "will remain precarious until she has effected a substantial diversification of her industries."

Extraterritoriality in Japan, by F. C. Jones (Yale University Press, pp. ix, 237), is a scholarly and well-organized study of this important subject. To the Western powers, extraterritorial jurisdiction appeared a necessary safeguard for the life and property of their resident nationals, but in Japan (as in China) this humiliating privilege was a source of far-reaching complications. Pointing out the evils of the system, Mr. Jones expresses the belief that it constituted a serious obstacle to the development of modern Japan. The story of Japan's attempts to secure the abolition of extraterritoriality, culminating in the Aoki-Kim-

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berly treaty of 1894, is well told; on the negotiation of this 1894 treaty, the author has supplemented the sources in English by materials drawn from the memoirs (in Japanese) of Count Mutsu, at that time the Japanese minister of foreign affairs.

POLITICAL THEORY AND MISCELLANEOUS

Nothing that comes from the pen of Sir George Young can be dull or altogether useless. That is made clear by an adventurous little volume, *The Pendulum of Progress* (Yale University Press, pp. 184), in which the writer tries to replace the humanistic terminology and method of political inquiry by terms and methods approaching as near as possible to geometrical calculations. He applies his new technique to various problems of our time, and thereby finds, for instance, that political change may be explained by means of what he calls the "spiral of progress." He assumes the existence of two driving forces, Nationalism and Socialism; and these forces, acting sometimes in the same direction, sometimes in opposite ways, drive politics in a slowly ascending spiral round a dial, the zones of which are successively Monarchism, Conservatism, Coalitionism, Radicalism, Laborism, Socialism, Communism, Fascism, and so to Monarchism again. The apparent swing of the pendulum is in reality the spiral movement from one side of the dial to the other. Whether the amusing diagrams constructed by Sir George will help students of politics to see clearly into the nature and solution of present-day problems, one must beg leave to doubt. Those problems are so complex that any system for giving them a simplified expression would be welcome to all of us. But not all the ingenuity of the writer can really extract wisdom from a statement such as that which assures us that "the growth and degeneration of states is somewhat similar to that of stars, and that it would be instructive to construct for states what would correspond to a 'Russell diagram' for stars. We shall then soon find that states arrange themselves, in regard to the diameter of the nucleus and its luminosity or radiating power, along what corresponds to Russell's 'main sequence'—and that this includes the majority of states as it does of stars. Away up above are the 'Red Giants', like the union of Soviets with high luminosity and low heat. Away down below, 'White Dwarfs' with high temperature, low luminosity, and their atoms reduced to their simplest expression. Any loss of stability is likely to throw a 'main sequence,' stable state up into revolution or down into reaction." We had long suspected that!—D. MITRANY.

A. L. Rowse's *Politics and the Younger Generation* (London, Faber and Faber, pp. 303) is a suggestive work by one of the most distinguished

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of the younger members of the British socialist movement who is a fellow of All Souls and an historian of some repute. "The plain fact," boldly says Mr. Rowse, "is that a people that neglects politics cannot as a people be happy," a remark not inapposite to conditions in the United States. Mr. Rowse, however, is concerned primarily with British politics, of which he sketches the economic, social, institutional, and intellectual background. On the title-page, he quotes the saying of M. Benda that the present age is peculiarily the age of politics—a statement which is not so much a challenge to the Marxists who have always wanted government in business as to belated Spencerians. Legislation today may be especially concerned with economic matters, but the ultimate struggle is not about the production of wealth, but about the distribution of power in the social structure. Mr. Rowse frankly looks to political means for the correction of economic defects. He is a socialist, not so much of that influential school which would vindicate the natural rights of man in the field of industrial organization, as because he desires to see the national and international order rationally planned. This does not mean that he has not faced the question, "planned for what?" Philosophically a "this-worldly" Marxian materialist, Mr. Rowse is yet typical of English socialism in his preoccupation with ideal and cultural questions in which he takes up a position nearer to that of Dewey than he himself seems to admit. The chief value of his book to the general reader lies in the fact that it is an interesting statement by a singularly intelligent Englishman of that interim ethic in social philosophy at present general in British progressive thought.—GEORGE E. G. CATLIN.

The International Gold Problem; A Record of the Discussion of a Study Group of Members of the Royal Institute of International Affairs, 1929-31 (Oxford University Press, pp. 240) is a rare book on gold, for something new is said concerning the problem and old ideas are presented in a new light. It is highly recommended for purchase if the price ($7.50), excessive in view of the means of most of those who can profit from it, is not an insuperable obstacle. Robertson has a brilliant essay in which he convincingly presents the view that stable prices ought not always to be the goal of the monetary practitioner, and in which the practical difficulty of determining upon an index for the measurement of prices for different countries is presented well. Hawtrey contributes poignant remarks on numerous subjects. In particular, he points out that statutory limitations on the operations of the Bank of France account for the large influx of gold into France, that the willingness of central banks to purchase foreign exchange would reduce gold movements to the vanishing point, and that reserves ought to be determined on a logical

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basis. In his opinion, the extent to which contraction can be carried out at home gives an important indication of the amount of reserves to be held. Rist, the ex-deputy governor of the Bank of France, defends the recent policies of the Bank of France: gold is inadequate to support the high price level of 1925; French accumulations are to be associated with economy enforced by reduced incomes, and hence, reduced imports, and the fear of investing abroad. But alas, on the vital point of the unwillingness of the government to modify the Bank of France charter along desired lines, he is discouragingly silent.—S. E. HARRIS.

At a moment when governmental budgets in all countries are being deranged by the effects of the economic crisis, the comparative study by Egbert Munzer, *Dynamischer Staatshaushalt: Der Einfluss der Wirtschaftskonjunkturen auf den Oeffentlichen Haushalt* (Jena, Fischer, pp. vi, 54), must encounter a lively interest. Munzer believes that the ideal budget would be a dynamic one—a budget planned with definite reference to the cycle of prosperity. But he doubts the possibility of achieving this ideal, in view of the unsatisfactory state of economic understanding of the phenomena underlying the business cycle. However, the author believes that we can take some steps in this direction by planning a budget for a period of several years, by considering carefully which items in the budget are most likely to react to depressions in business, and to treat them more or less separately, by accumulating reserve funds during the fat years upon which to draw during the lean ones, by adapting the building program of the government and similar expenditures to the cycle, etc. It will be noted that these ideas coincide in part with what has been suggested by economists for the purpose of toning down the violence of depressions by stimulating economic life at appropriate moments and retarding it at others. It is interesting that these ideas should be put forward also as a fiscal policy for the purpose of safeguarding the government against the evil effects of these depressions.—CARL J. FRIEDRICH.

Not only economists but also political scientists are interested in plans for economic stabilization, because every such plan imposes new responsibilities upon government as well as upon business. The success of the War Industries Board during the World War was predicated upon the grant of dictatorial powers to the president of the United States; and many recent authors of peace-time "plans," apparently inspired by that example, assume a much more highly centralized government than has hitherto existed in the United States in time of peace. The proposal sponsored by Mr. Gerard Swope, president of the General Electric Com-

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pany, as outlined in *The Swope Plan,* edited by J. George Frederick and published by The Business Bourse (pp. 221), differs from most of the others in this, that it is based upon the voluntary acceptance of a decentralized system of self-government in industry, in which the government plays a minor rôle. The present volume, while making clear that no plan will be accepted without long and careful study, provides a convenient introduction to such a study and should stimulate more systematic and purposeful discussion of the subject by men of affairs as well as by scholars.—A. N. HOLCOMBE.

Although *Principles of Public Utilities,* by Eliot Jones and Truman C. Bigham (Macmillan Co., pp. 799), is primarily a text on the economics of electric light and power, gas, street railway, telephone, and water utilities, fully half of the book deals with problems of regulation. The approach is critical, the authors frankly stating their awareness "of the fact that regulation has failed thus far to safeguard adequately the public welfare." Supreme Court rulings on valuation and fair return, lack of jurisdiction over security issues, holding companies, and interstate developments, and ineffective administrative methods are found to be the chief reasons for this situation. Although not unfavorably disposed toward public ownership, the authors still have faith in administrative regulation by utility commissions. The book would doubtless fail to meet with the approval of the National Electric Light Association, but it seems to the reviewer a fair analysis of the present state of regulation. —H. L. ELSBREE.

Die Internationale Juristische Person, by Hans von der Lühe (Göttingen, Vandenhoeck und Ruprecht, pp. 87), is a product of the seminar of international law and diplomacy at the University of Göttingen, and in the best tradition of German seminar work. It is throughout critical in spirit in a scholarly way, and is provided with a comprehensive bibliographical apparatus. Two fallacies of method had to be guarded against: first, that of assuming the existence of an international juridical person merely because of the obvious need for such a concept; second, given the uniform end of the various international unions, that of inferring therefrom a uniformity in their juridical character. The author's careful conclusion is that international unions have no special residence: as juridical persons, they are equally at home in all the member states. Yet they are international, through the nature of their functions, through the extent and content of their legal competence, through the nature of the act which created them, and in regard to the uniformity of their legal competence in the states which are members of the union.—D. MITRANY.

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Although there are still many small farmers in North Carolina, the state has become sufficiently industrialized to make it a very different entity from that which Professor D. H. Gilpatrick describes in *Jeffersonian Democracy in North Carolina 1789-1816* (Columbia University Press, pp. 257). During these years of the Federalist party, the sympathies of the overwhelming mass of North Carolinians were strongly Jeffersonian. For various reasons, but probably in large measure because of the commercial isolation of the state and because of its racial and economic make-up, a program looking toward a broad interpretation of national powers, heavy expenditures by the central government, the establishment of a national bank, and the general promotion of commercial interests met with little save opposition in this republic of small farmers. Jefferson was, of course, glad to have their political support, and applauded their social and political ideas, though their way of life was so simple and their ignorance of the world of culture so profound that he would hardly have felt at home among them.

The most recent addition to the materials edited by Professor Gilbert Chinard and dealing with the thought of Thomas Jefferson is a beautifully printed volume entitled *The Correspondence of Jefferson and Du Pont de Nemours* (Johns Hopkins Press, pp. cxxiii, 293). The letters, with two or three exceptions, were written between 1800 and 1817. The introduction contains an interesting comparison between the political, economic, and educational views of Jefferson and DuPont, with some attention to the relation of both to the doctrines of the Physiocrats. As in his biography of Jefferson, Professor Chinard is of the opinion that Jefferson derived very few of his views from this group of French thinkers, and that in a number of respects his opinions were markedly different from theirs.

The Stabilization of Employment in Philadelphia Through the Long-Range Planning of Municipal Improvement Projects, by William N. Loucks (University of Pennsylvania Press, pp. xix, 341), a study of expenditures for public improvements in Philadelphia from 1919 to 1928 and of plans for future projects, forms No. XV of the Research Studies of the Industrial Research Department of the Wharton School. Dr. Loucks analyzes the procedure of authorizing, planning, and financing municipal projects, and discusses the problems that arise out of the effort to spend the city's money in such a way as to contribute most effectively to the stabilization of employment. He thinks that long-range planning is practicable, despite the difficulties which he describes. He ends by sug-

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gesting a program for Philadelphia. There are elaborate tables and charts, and a brief bibliography. The book is an excellent presentation of a subject that has been too seldom studied with reference to definite local conditions. It is to be hoped, as Mr. Otto T. Mallery remarks in the foreword, that there will be similar studies in other cities. For such, the book sets a high standard.—WILLIAM T. HAM.

Lynchings and What They Mean (pp. 76), recently published in Atlanta by the Southern Commission on the Study of Lynching, is a pamphlet which should be expanded into a book. In spite of its brief compass, facts and figures, diagrams and maps, are presented regarding lynchings and attempted lynchings from 1889 to 1929; the twenty-one cases occurring in 1930 are analyzed in some detail; the habits of man-hunting mobs, the action taken by police officers, militia, politicians, courts, the press, the church, and citizens generally are summed up briefly. Remedial measures are also discussed, again much too briefly. Figures collected by the commission reveal the fallacy of the notion that assaults upon white women are the sole, or even the most important, causes of these outbreaks of "jungle law." One of the most encouraging facts developed by the study is the rapidly increasing proportion of frustrated lynchings during recent years; since 1921, they have outnumbered the cases in which victims lost their lives. Also encouraging is the record showing that the number of persons lynched annually in the United States declined from a maximum of 255 in 1892 to a minimum of ten in 1929. As stated above, however, a total of twenty-one cases was reported in 1930. So valuable in spite of its brevity is this initial pamphlet issued by the commission that political scientists, sociologists, and statisticians everywhere will await with keen interest the volume of case studies which the commission is now preparing for early publication. —ROBERT C. BROOKS.

The Brookings Institution has issued a pamphlet on *Advisory Economic Councils* (pp. 84), prepared by Lewis L. Lorwin. The author discusses briefly the background of economic advisory bodies, and then describes the form and function of the French and German councils. He finds that "the councils in both countries have been useful as a result of their studies of economic problems . . . but they have not been of much aid in the solution of the larger questions of our times." It is believed that advisory councils "can become in time economic guides pointing out economic dangers ahead and indicating the path of economic safety." The appendix contains translations of pertinent decrees and legislation. The

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pamphlet brings together in convenient compass important and useful material on a timely subject.

With the collaboration of Mr. Junichi Ko, chief of the economic research department of the Bank of Japan, Dr. Harold G. Moulton has produced a highly informing volume entitled *Japan: An Economic and Financial Appraisal* (The Brookings Institution, pp. xix, 645). Though having to do mainly with public finance, the volume contains chapters on natural resources, transportation, public utilities, industrial development, foreign trade, population, and other matters of deep concern to students of public policy and international relations. The work is based on exacting research, which was aided by the best talent and facilities that Japan affords, and will go far toward clearing up hazy notions commonly entertained in Western lands concerning the actual bases and outlook of the Empire's economic life. A hundred pages of significant statistical tables add much to the volume's value. Plenty of evidence is furnished that the phenomenal rate of economic expansion of the past twenty years cannot longer be maintained, and that population pressure, which some writers have been inclined to discount, may be expected to offer a problem of increasing seriousness.

The Education of Jeremy Bentham, by Charles Warren Everett (Columbia University Press, xxii, 216), is a readable account of Bentham's first forty years, in terms of the events and associations which helped to form his mind and his writings. Some hitherto unused material is included, although nearly all that is of importance had already been printed. But if the author does not bring forward very much new material, he presents his story in such a fashion as to furnish the reader with a clear, and rather striking, picture of Bentham and his earlier friends and associates. The book is, therefore, a useful as well as a pleasant introduction to the discussions of Bentham's work contained in the books of Halévy, Stephen, and Dicey.

The convenient *Political Handbook of the World* (Council on Foreign Relations, 1932, pp. 200), under the editorship of Walter H. Mallory, shows the general situation of parliaments, parties, and press as of January 1, 1932. Revolutions and new party alignments are so frequent that without such an annual it would be difficult to understand many current movements or to recognize the reasons for the appearance of many new names in the daily news. This is evident at a glance when it is seen that the cabinets of more than one-half of the sixty-four states of the world changed during the year 1931.

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In *Comparative Tax Rates of 290 Cities, 1931* (reprinted by Muncipal Administration Service), Mr. C. E. Rightor continues his valuable pioneering in the land of government study of facts. As he points out, the table is useful, not as a yard-stick of municipal efficiency, but because tax rates influence city credit rating and because the trend in tax burden is important. General tendencies of 1931 include a smaller annual increase and, if New York City and the fifteen Canadian cities be excluded, a marked reduction in actual assessed valuation.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CHARLES M. KNEIER AND CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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GOVERNMENT PUBLICATIONS

MILES O. PRICE

Law Library, Columbia University

AMERICAN

UNITED STATES

Congress.

House of representatives. Regulations of legislatures of certain states prescribing congressional districts in accordance with reapportionment act of Congress based upon the census of 1930, and decisions of state courts of Illinois, Minnesota, and New York; comp. by William Tyler Page. Washington: Govt. Ptg. Off., 1931. 75 p.

Senate. Senate manual containing standing rules and orders of Senate, Constitution of United States, Declaration of Independence, Articles of Confederation, Ordinance of 1787, Jefferson's Manual, etc. Washington: Govt. Ptg. Off., 1931. 730 p.

———. *Indian affairs committee.* Survey of conditions of Indians in the United States (parts 13, 15, 16 of hearings on the Indian administration of the Government). Washington: Govt. Ptg. Off., 1931.

———. *Senatorial campaign expenditures select committee.* Campaign contributions and expenditures of anti-Smith Democrats, 1928, report . . . by Mr. Nye . . . Washington: Govt. Ptg. Off., 1931. 19 p.

———. Same . . . hearings, 71st Congress, 3d session . . . pt. 2. Washington: Govt. Ptg. Off., 1931. 77–388 p.

The last two publications above relate to the alleged campaign expenditures of Bishop James Cannon, Jr., in connection with the anti-Smith Democrats during the presidential campaign of Alfred E. Smith, 1928.

———. *Unemployment insurance select committee.* Hearings, 72d congress, 1st session, . . . to investigate unemployment insurance systems . . . 2 pts. Washington: Govt. Ptg. Off., 1931. 521 p.

Government printing office.

New editions are announced of the price lists of publications on foreign relations (no. 65) and political science (no. 54), for sale by the superintendent of documents.

National commission on law observance and enforcement.

Enforcement of prohibition laws, official records of national commission . . . pertaining to its investigation of facts as to enforcement, benefits, and abuses under prohibition laws, both before and since adoption of 18th amendment . . . Washington: Govt. Ptg. Off., 1931. 5 v.

President.

Message of President of the United States on foreign affairs, . . . Dec. 10, 1931 . . . Washington: Govt. Ptg. Off., 1931. 10 p.

State department.

Papers relating to the foreign relations of the United States, 1917: supp. 1, world war. Washington: Govt. Ptg. Off., 1931. 708 p. (Publication 228.)

Tariff commission.

United States-Philippine tariff and trade relations. Washington: Govt. Ptg. Off., 1931. 136 p.

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STATE

ILLINOIS

University of Illinois, Urbana. Studies in the social sciences. Vol. XVII, nos. 1–2: Anglo-Chinese relations during the seventeenth and eighteenth centuries, by Earl H. Pritchard. Urbana, 1929. [1931]. 244 p.

This monograph is an attempt to supply an adequate treatment of the earlier Anglo-Chinese relations, a field which its author says has been neglected. Some emphasis is laid upon the commercial factors which gave rise to or influenced these relations. In this connection, there are elaborate tables covering many aspects of Anglo-Chinese trade during the period. There is also an extensive bibliography.

INDIANA

Library and historical department. Historical bureau. Constitution-making in Indiana. A source book of constitutional documents with an historical introduction and critical notes, by Charles Kettleborough. Vol. III, 1916–1930. Indianapolis, 1930. 411 p. (Indiana historical collections, Vol. XVII.)

Volumes I and II of this work were issued in 1916, in connection with the centennial of the state's admission into the Union. "As in the preceding volumes, the field has been limited to documents bearing some sanction of authority . . . activities of the general assembly, governors' messages, party platforms, official ballots, court decisions, and opinions of the attorneys-general."

IOWA

University of Iowa, Iowa City. University of Iowa studies, Vol. IX, no. 4: Responsible government in Prince Edward Island; a triumph of self-government under the crown, by W. Ross Livingston. Iowa City, 1931. 136 p.

An account of the struggle of Prince Edward Island for constitutional self-government, while still remaining loyal to the crown. One of a series of similar studies by Professor Livingston, the first of which was "Responsible government in Nova Scotia . . . (University of Iowa studies in the social sciences, Vol. IX, no. 1).

NORTH CAROLINA

Tax commission. Report. Raleigh, 1930. 620 p.

North Carolina state government has recently undergone some important alterations. One of the bases of these changes is the above report of the tax commission. "The report is in fact much more than a report of the tax commission. It is a product of the . . . coöperation of other state departments and institutions, of the U. S. bureau of public roads, and of many individuals . . ." The report is an attempt to ascertain the taxable resources of the state and the best methods of taxation. It should be read in connection with the survey of the organization and administration of state government in North Carolina, made in 1930 by the Brookings Institution.

WISCONSIN

Industrial commission. The alleviation of unemployment in Wisconsin, by Don D. Lescohier and Florence Peterson. Madison, 1931. 130 p.

This is an analysis of the unemployment problem in Wisconsin and the various means of supplying relief. It is copiously provided with statistics setting forth the problem and its attempted solution, of which one important proposed means is unemployment insurance.

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FOREIGN

GERMANY

Auswärtiges amt. Kraus, Herbert, Der auswärtige dienst des deutschen reiches (Diplomatie u. konsularwesen). Eine sammlung von gesetzen, verträgen, verordnungen . . . de f. d. auswärt. dienst, inbes. d. konsular . . . Berlin, 1932. 1216 p.

The organization, regulations, etc., of the German foreign service.

GREAT BRITAIN

Parliament. House of lords. Closer union in East Africa. Report of the joint select committee. Vol. I. Report, together with the proceedings of the committee. London: H. M. S. O., 1931.

———. *House of commons.* Closer union in East Africa. Report of the joint select committee. Vol. I. Report, together with the proceedings of the committee . . . London: H. M. S. O., 1931.

Colonial office. Commission to enquire into the financial situation of British Guiana. Financial situation of British Guiana. Report of a commission . . . London: H. M. S. O., 1931. 63 p.

RUSSIA. U. S. S. R.

Institut Sovietskogo stroitel'stva i prava—Kommunisticheskaia akademii. Ezbegodnik sovietskogo stroitel'stva i prava na 1931 god (za 1929/30 god). (Annual of Soviet political organization and law for 1931—as of 1929/30. Moscow, 1931. Text in Russian.)

A new annual, containing articles by officials of the Soviet government. These articles, of which there are twenty in this first issue, discuss the organic make-up and functions of the Soviet state; several are on legal topics.

———. *Narodnyi komissariat po inostrannym delam.* Meshdunarod-naia politika v 1929 godu. Dogovory deklaratsii i diplomaticheskaia perepiska. (Foreign policies in 1929. Agreements, declarations and diplomatic correspondence. Edited by A. V. Sabanin. Moscow, 1931.)

A new annual whose purpose is indicated by its title.

INTERNATIONAL

LEAGUE OF NATIONS.

Supplement to handbook of international organizations. (Associations, bureaux, committees, etc.) Geneva, 1931. 75 p.

League of nations library. Books on the work of the League of nations catalogued in the library of the secretariat. First supplement, January 1928-October 1931. Geneva, 1931. 156 p.

This should be a useful checklist of both official and unofficial publications relating to the work of the League, though of course it does not attempt to list all books published, but only those in the League library.

———. Annotated bibliography on disarmament and military questions. Geneva, 1931, 163 p.

This was got up for the use of the delegates to the disarmament conference, and so lists only works found in the League library. Annotations are brief, but useful.

———. Monthly list of books catalogued in the library of the League of nations. Vol. 4, no. 12, December 1931.

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This is listed because "this number of the monthly list is a special bibliography on fascism, instead of a list of the books received and catalogued during the month of November. . . . The library . . . recently purchased the collection of the International Center for Fascist Studies, at Lausanne, perhaps the most complete collection of books and pamphlets in existence on this subject. . . ."

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Charles A. Beard
William B. Munro
Jesse S. Reeves
John A. Fairlie
Benjamin F. Shambaugh
Edward S. Corwin

* Deceased

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